

2547
No. 12023

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.
HONOLULU PLANTATION COMPANY,
Appellee.
and
HONOLULU PLANTATION COMPANY,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

(In Four Volumes)
VOLUME III
(Pages 841 to 1248)

FILED

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PAUL P. O'BRIEN,

CLERK

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for the District of Hawaii

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(Testimony of C. C. Crozier.)

Q. In connection with this land tenure you stated that some plantations were largely fee, some largely leasehold, some mixed. Is there any particular reason for that?

A. Well, from my experience and reading and listening, fortunately as I have been in this work I have had the opportunity of talking to the old plantation managers—in the old days, the horse and buggy days, so to speak, in the plantations prior to annexation there was a question of land tenure, and naturally prior to the division of the land—we'll go back to 1850—the land was all owned by the king. And we find sugar coming into its own as a commercial enterprise of the Territory in about 1860. In those days it was—most of the plantations were started on a shoe string. Land was cheap. Rents were next to nothing. Then, later on, when mainland capital came into the sugar business by reason of their experience, as I see it, and knowing that the sugar business was a sound business for the Territory, those mainlanders felt that in order to put that much capital in a sugar enterprise that from their back [1531] experience was to own the fee. Then with annexation, when we wrapped ourselves within the folds of the American Flag and assured ourselves of posterity and security, we find a lot of these people that acquired these lands would not sell them and would lease them. Naturally, a lot of the individuals were in the sugar business and upon their death we find family holding corporations and trust estates being

(Testimony of C. C. Crozier.)

created. So that from about 1900, from annexation on down, it has been almost impossible to buy any fee land in the sugar enterprise. That is partly due maybe to the type of ownership and second, as in 1910 and up to the First World War, the rents were reasonable. And possibly in a business economy standpoint it was cheaper to rent than to purchase. Of course, some of the rents were low under these long term leases of 1880 and 1875, for 50 and 60 years.

Q. Then, as I understand it, it was the policy of these larger owners, estates and owners, not to sell but to lease? A. That is correct.

Q. You recently made a detailed study of the land holdings, have you not?

A. Yes, Mr. Vitousek. I was requested by Mr. Courtney, when the House Investigating Committee was here, to take from our records certain statistics relative to the acreage on the different islands in cane.

Q. Held by estates? [1532]

A. Not necessarily. The study was for different years, the Territory as a whole, the fee land owned by the sugar companies, and the respective percentage, and the lease acreage and its respective percentage.

Q. Well, I refer particularly to a study regarding the land holdings by estates.

A. Oh, yes.

Q. Did you make such a study?

A. Yes.

(Testimony of C. C. Crozier.)

Q. That was made for the Legislature of the Government?

A. That was made for the Legislature.

Q. Have you got a copy of it with you? (Witness hands a document to Mr. Vitousek.) I show you what is headed here "Real Property Inventory Schedule, January 1, 1945, City and County of Honolulu." What does that refer to?

A. Well, this is a schedule that was made up at the request of the Attorney General relative to the list of property owners, by the individuals, corporations and estates that have 500 acres or more of land on the Island of Oahu. The schedule shows the largest land owners as the Bishop Estate was 57,000 acres—

Mr. Rathbun: Just a minute, before you testify. I object to him testifying to anything about it. When the time comes—

By Mr. Vitousek:

Q. Before you give the figures, Mr. Crozier, I want to [1533] ask more of the general questions as to what it shows rather than the details.

A. Well, it shows that of the property owners on Oahu, Oahu having an acreage of 386,000 odd acres—

Mr. Rathbun: Well, he's reading again from it. I object to it. If he's going to ask him about it, offer it or something, if he's going to read from it. Then we can make an objection.

Mr. Vitousek: If the Court please, I'm going to offer it in evidence as soon as the witness shows in general what it is.

(Testimony of C. C. Crozier.)

Mr. Rathbun: Well, it speaks for itself what it is.

The Court: He is entitled to describe what it is.

Mr. Rathbun: Well, I object to it as incompetent, irrelevant and immaterial in this case; no purpose shown of any kind bringing such thing as this under the issues, all the land holdings of the island.

Mr. Vitousek: Well, if the Court please—

The Court: This relates to the Island of Oahu?

The Witness: It does.

The Court: The document will speak for itself if it comes into evidence, but the witness may describe what it is, to lay a foundation for offering it. By Mr. Vitousek:

Q. Without giving detailed figures, Mr. Crozier, just [1534] in general language what does this document show?

A. Well, this document is an inventory schedule showing 28 property owners, their respective names, their respective acreages, their value. and the percentage; and further classified into the different types of land such as commission, apartment, residential, agricultural, or miscellaneous, of their respective areas.

Q. And relates to the Island of Oahu?

A. City and County of Honolulu.

Q. City and County of Honolulu?

Mr. Vitousek: Now, if the Court please, we offer this document in evidence.

The Court: What is the purpose?

(Testimony of C. C. Crozier.)

Mr. Rathbun: I object to it as incompetent, irrelevant and immaterial. It has nothing to do with the issues here as far as any purpose stated is shown.

Mr. Vitousek: If the Court please, it has several purposes. One is stated in our opening statement. There is to be proven what is termed as a leasehold plantation, that it is common practice in this Territory, well-recognized business practice, due to the fact that the lands are held by large estates to lease; that the lessees reasonably expect continuation of the lease at whatever rents are prevailing at the time; that the only way these sugar plantations, known as leasehold plantations, can secure land is by way of lease. It bears out [1535] the evidence previously brought before the Court that no other lands are available for this plantation, and it will be part of the foundation of further testimony that this witness will be asked to give in connection with the investments required, and which will then be tied up in his opinion of the value as between a leasehold and a fee simple plantation, this being a leasehold plantation.

The Court: Let me have that last point again. It will be used by the witness—

Mr. Vitousek: It will tie up to the witness' further studies we are going to introduce or propose to introduce, showing the investments as between a leasehold and a fee simple plantation, which in turn will be followed by this witness' testimony regarding, giving a basis for opinion of damage in this particular case.

(Testimony of C. C. Crozier.)

The Court: Well, as to the issue of it being the practice to lease lands to operate plantations, and as to the issue of whether or not they are available for purchase on a fee basis, I hadn't been of an opinion that there was too much of a dispute on that, and I can't definitely see where this document would particularly affect that issue. But if this is to be used as a basis for some testimony that this witness is going to give which will be material on the condition that it will be tied up, related thereto, I will admit it conditionally. Have you anything you want to say? [1536]

Mr. Rathbun: Well, I haven't heard anything in this statement that makes it in any way permissible in this case. The practice of holding land by lease—what's the difference about a practice? They had leases here and this case stands on the exact leases that are in evidence. Their practice has nothing to do with it. The rights are under these leases and in evidence. This sheds no light on that. Further, that "we may reasonably expect renewal." I can't possibly imagine how that shows anything about an expectation of renewal. Just showing that certain people own certain land: no land available. Well, there's all those lands. We know whether they are available or not. That shows nothing on its face to show that. And the only way they can get land is by lease. Nothing about this that shows that. Cluttering up this record with a wide range of things that have nothing to do with the case.

The Court: Well, that is my general reaction

(Testimony of C. C. Crozier.)

to it also. Incidentally, this has become a public document, hasn't it?

The Witness: It has.

The Court: And is one which the Court could take judicial notice of if need be.

Mr. Rathbun: I don't know what it is.

The Court: I am going to admit it conditionally as related to this witness' testimony, and unless it is somehow or other tied in with testimony he later gives, it may be moved to strike it, if one wishes to strike it. So that it [1537] may become—

The Clerk: Honolulu Plantation Exhibit No. 14.

The Court: No. 14 admitted conditionally.

(The document referred to was received in evidence as Honolulu Plantation Company's Exhibit No. 14)

[Printer's Note: Exhibit No. 14 is set out in full at page 1538 of this printed Record.]

By Mr. Vitousek:

Q. You stated, Mr. Crozier, that you had made a study of the plantations as between the character, their holdings, fee and leasehold, and made some schedules from that basis. Have you got them with you? (Witness hands some documents to Mr. Vitousek.) I hand you, Mr. Crozier, and hand counsel a copy, of what is headed "Sugar Cane Acreage, Territory of Hawaii, January 1, 1935." And without giving the details, would you describe in general what that shows?

A. This is a schedule, as prepared by me, showing sugar cane acreage, Territory and Oahu, taken

(Testimony of C. C. Crozier.)

from the tax records as to the total area in cane, in fee throughout the Territory, and the percentage, the total area in cane throughout the Territory of all their leased areas and its percentage; then for the County of Oahu, City and County of Honolulu, the total acres in cane, its percentage, and the total area in cane under lease and its percentage. Likewise, for the year January 1, 1939; likewise, for the year January 1, 1944.

Mr. Vitousek: We offer this in evidence.

Mr. Rathbun: I object to that for the same reason that [1538] I objected to Exhibit 14.

The Court: It's all very interesting, Mr. Vitousek, but what is its purpose? I don't feel it is getting us anywhere with regard to the issues of this case.

Mr. Vitousek: Well, if the Court please, in this case—I will state again—referring to the opening statement, it is our contention that in viewing this case we must take into consideration the business practices in this Territory; that in making the investment the Honolulu Plantation made, as has been testified to—and the improvements—it had, as an owner, the right to expect those business practices to continue; that these exhibits show that it's been the practice in this Territory to conduct plantations, and particularly shows that on the Island of Oahu conducted plantations, by leasing land. This witness will later show in his study of these plantations the difference in investments between leased land and fee simple land, and later,

(Testimony of C. C. Crozier.)

as I stated, will give his view as to damage suffered in this particular case. But certainly we are entitled to show what an owner would expect and what a prospective purchaser would expect. That would be shown by what had occurred in the past, that the land in this Territory is closely held, it becomes necessary to lease it, that it has been the practice of those landlords to continue those leases. And consequently anyone who would be a prospective purchaser for the property making up the Honolulu Plantation, before and after the takings involved in this suit, would [1539] undoubtedly make just such a study as shown here to find out whether they could reasonably be assured that they could continue holding those lands under lease. Because they would undoubtedly be required, as this particular owner was required, to make investment in the nature of improvements, ditches, transportation system, improvements to mill, and so on, which would not be made unless it was reasonably expected that they could anticipate continuing as had been done in the past. And this all builds up that history.

Mr. Rathbun: There isn't one thing that illustrates what he said.

The Court: I don't think so either. Assuming that all you said was true, I don't see where this set of figures advances that proposition that you argue for.

Mr. Vitousek: If the Court please, the witness has not finished his testimony yet.

(Testimony of C. C. Crozier.)

The Court: Well, I'll do the same thing with this that I did with the other; I'll admit it conditionally, subject to a motion to strike.

The Clerk: Honolulu Plantation Company Exhibit No. 15.

(The document referred to was received in evidence as Honolulu Plantation Company's Exhibit No. 15.)

[Printer's Note: Exhibit No. 15 is set out in full at page 1539, of this printed Record.]

By Mr. Vitousek:

Q. I show you, and I have handed to counsel a copy of it, what is headed "Honolulu Plantation Company, Sugar Cane [1540] Acreage." What in general does that show?

A. This is a similar schedule except that it pertains to the Honolulu Plantation specifically. It shows that on January 1, 1935, the acreage owned in fee in sugar cane land and the acreage under lease—what is the total and their respective percentages. Likewise, for the year January 1, 1939, and again January 1, 1944. And at the bottom there is a note showing that a decrease in sugar acres between '39 and '44 of so many acres at a certain percentage—

Mr. Vitousek: We offer this particular document in evidence, if the Court please.

Mr. Rathbun: I object to that for the same reason, particularly in regard to the information on it from January 1, 1935, to January 1, 1939, and from 1939 up to the time of the first, starting of

(Testimony of C. C. Crozier.)

the first law suit involved in this case. They have nothing to do with the issues here.

Mr. Vitousek: If the Court please, what they have to do with the issues here is the very same thing that's been brought out by the witness previously. It's quite true that in this particular case we have stated to the Court that we are asking only for damages due to the takings involved in this suit. But the history of this plantation, showing the amount of fee and the amount of leasehold over the period of time involved is a matter that should be taken into consideration. It shows the relative proportions which bear out the statements made by [1541] previous witnesses that this is a leasehold plantation, and in addition to that there were questions asked of Mr. Schmutz while on the stand concerning these previous takings.

Mr. Rathbun: They are not claiming any damage in the remainder, as to the lands that were taken from 1935 up to the first taking in the cases involved here. I cannot see where this has any materiality and object to it on that ground.

The Court: What is the date of the first case here?

Mr. Rathbun: I can't tell you offhand. It's after '39.

The Court: After '39?

Mr. Vitousek: June 21, 1944, if the Court please, was the first case filed in the present proceedings.

The Court: So this figure here represents the prior cases that are not here involved?

(Testimony of C. C. Crozier.)

Mr. Vitousek: Yes, if the Court please. This plantation started out as a mill and other property as a 35-ton mill and plantation. And so we in this case have been endeavoring to trace its history and bring it down to the size it was before these takings so that we can confine the witness' testimony to the amount we are going to claim as damages due to the takings involved in this suit?

The Court: I think this document is admissible. I will overrule the objection and you may have an exception.

The Clerk: Honolulu Plantation Exhibit No. 16.

(The document referred to was received in evidence as Honolulu Plantation Company's Exhibit No. 16.) [1542]

[Printer's Note: Exhibit No. 16 is set out in full at page 1540, of this printed Record.]

By Mr. Vitousek:

Q. Mr. Crozier, in regard to the Honolulu Plantation Company itself, have you made a study of that plantation, its properties?

A. Yes, insofar as my capacity as a taxing official, and further, being an appraiser for the Government in a number of its takings, I have gone into the Honolulu Plantation to a considerable extent.

Q. In connection with that particular matter, I perhaps overlooked it, have you acted as an appraiser in appearing before the Court in any proceedings?

A. I have.

(Testimony of C. C. Crozier.)

Q. Would you give the names of some of them?

A. Well, I have been in the Territorial Courts in considerable—numerous times. I have also been in the Federal Court. The outstanding case that was tried in the Federal Court, I believe, was what is known as Civil 436, which took Damon Estate land outside the Navy Yard gate, what is known as a gore lot between Kam highway and Dillingham Boulevard. And then the area on the lower side of Dillingham Boulevard, entrance to Hickam Field and towards John Rodgers Airport. I was a Government witness in testifying as to the value of that land and the improvements thereon.

Q. Now, following up this question I asked you, you have placed plantations, described them in two categories, one [1543] whether leasehold or not and the other whether irrigated or not. What category would you put the Honolulu Plantation in?

A. The Honolulu Plantation refers principally to a leasehold plantation and as to its field operations it would be an irrigated plantation.

Q. In assessing this property for tax purposes, how did you get your information?

A. Well, under the law, in the provisions relative to valuing the land, there are certain items set forth in the section pertaining to the determination of cane rates. The owners report to us that certain of their lands are under lease to the different sugar and pineapple companies or other uses. We then turn to the lessee or the occupant for a classification of that land. We find the land

(Testimony of C. C. Crozier.)

in three categories, lands that are strictly used by the plantation in the production of sugar, sugar acreage; the second class is those areas under lease that we term attributable to the sugar enterprise. It might start with a mill, manager's house, reservoirs, railroads, ditches, roads, those areas that are dedicated by the lessee as part of the sugar enterprise. Then under these leases there are other types of land which we call "other uses", that the lessee might sublease if his lease provides for it, or he might use it in other activities other than sugar enterprise. Lots of times we find on Waialua, on this island only land and leasing land of which they sublease [1544] to a big area, to Hawaiian Pineapple Company.

Q. Now, in connection strictly with the Honolulu Plantation, was that procedure followed, the owners of the land made returns showing—

A. That's right, the owner's report—the eight or ten owners report that leases of the Honolulu Plantation state that blank acreage is leased to Honolulu Plantation; Honolulu Plantation then submits a return which shows the classification.

Q. Well, in the Honolulu Plantation return it did show whether it was leased or not also?

A. Yes.

Q. And whether they held it under lease?

A. Yes. They submit three types of classification. They submit a schedule for their fee lands showing their lands in fee that are tied up to our so-called mapping system, bearing in mind our

(Testimony of C. C. Crozier.)

basis of accountability is by maps. And the maps produce a parcel owned, whether it's a corporation, plantation or not, for the identification of ownership. That has an area on it. And then that area in turn is broken down.

Q. Then, as I understand it, for assessing purposes you get a declaration both by the owner and by the lessee? A. That's correct.

Q. As to the ownership of the land and the areas and the use?

A. Yes, the owner comes in and sets up the parcels with their mapping system, by acquisition or deed or by arrangement [1545] for accountability, and they say they own that acreage and in turn break it down by the occupants or lessees. Then the lessees submit classification, bearing in mind that the law provides that any land leased, the terms of which they are to pay the taxes on, that the lessee has the right of appeal. So you have the three schedules coming in, the plantation fee land—or four schedules really—the plantation fee land, land that they own under co-tenancy, land that they lease from the Territory of Hawaii, and land that they have under lease from others.

Q. And it shows the others?

A. The lists there — it lists their names and identification, the grant and the L.C.A.'s and the key and the acreage and that acreage broken down to its classification or use.

Q. Did you get your information from any other sources?

(Testimony of C. C. Crozier.)

A. Well, lots of times we have had lots of fun with them; we disagree with their classification and rearrange the classifications by our own field surveys.

Q. As you make inspection on the grounds.

A. That's correct.

Q. Have you made an inspection of the Honolulu Plantation property on the grounds?

A. Yes, many times.

Q. Any other method of getting information?

A. No, I think by that time we have the classification [1546] submitted by the occupant and the field checks, why we have pretty well covered the area in question.

Q. Well, do you ever have occasion to use the annual reports?

A. Well, they come in, that part comes in to the part of setting rates against these various areas.

Q. Then you do see those reports?

A. That's correct. A rather comprehensive study is made to determine the over-all rates of a plantation, of its cane fields, the attributable areas, if a reservoir or railroad is within a cane field. We have adopted the rate applicable to the adjacent cane, baseball park, or manager's house in the middle of a cane field, and so forth. The other use areas not used as part of the enterprise take their respective rate by conditions as found on the property. And we find them all the way from waste land to bank sites.

Q. In connection with the plantation itself, you

(Testimony of C. C. Crozier.)

speak about attributable areas. How about roads in fields?

A. Roads are classified as attributable area, set up.

Q. Well, why do you call it attributable areas?

A. Well, those are the areas that are used as part of the enterprise.

Q. Are they necessary for the enterprise?

A. They are necessary in the production of its sugar activity. [1547]

Q. What improvements, if any, are used as part of the enterprise?

A. Well, they are rather voluminous. You take a plantation and you go through the different types of improvements—

Q. Well, I mean—let's take the Honolulu Plantation Company.

A. The structural improvements on Honolulu Plantation, that's the mill, the manager's house, and the camps, pump houses and the like, are accounted for as real property. Their tax value is determined by replacement less depreciation due to age and condition. The other items, such as reservoirs, are real property. The improvements—there are reservoirs of different types; some are concrete lined and some have penstocks and the like and gates, and the valves and the like, are chattels of the corporation. The land itself is real. We have the ditches, different types of ditches. They are what we call the lined ditches and the open ditches. They are just the earth ditches or the

(Testimony of C. C. Crozier.)

lined ditches, have specific physical construction, concrete or boxes or the like. Some of the ditches are portable, some are permanent. The portable become permanent—the lined ditches are merged, the permanent ones are merged with the so-called area classification.

Q. How about railroads?

A. Railroad beds are real property and the ties and the bed itself are permanent property. [1548]

Q. Were there railroads and railroad beds on the Honolulu Plantation?

A. There are in certain sections.

Q. Used as part of the enterprise?

A. That's correct.

Q. How about a hospital?

A. The Hospital is part of Honolulu Plantation's enterprise and considered attributable, part of the enterprise activity.

Q. In connection with the mill, is there a generating plant? A. There is.

Q. Is that part of the enterprise?

A. That is.

Q. Well, in addition to that you described, how about the machinery and such, was there machinery located there?

A. Yes, different types, mill machinery, pump machinery, field machinery, all types of machinery in a sugar enterprise, all part of the chattels of the lessee.

Mr. Vitousek: If the Court please, may we take the usual recess?

(Testimony of C. C. Crozier.)

The Court: Yes, we can maintain our schedule by taking our recess at this time.

(A short recess was taken at 10:03 a.m.)

After Recess

[1549]

The Court: Proceed:

By Mr. Vitousek:

Q. Mr. Crozier, in connection with the mill machinery—by that I mean the engines, crushers, cane washers, all machinery in connection with the crushing of cane and making it into sugar—would you give in general the character of that machinery?

A. Well, recently there has come into the picture as you enter a sugar mill the washers, the conveyors taking care of the cane by reason of mechanical harvesting equipment, and that's brought into the mill and put into these conveyers. The cane then goes up and is chopped up and enters the rollers, the main part of the mill. And then it goes down and gets into the—the juices are run off and they get into the liming machines to take out the heavy ingredient of dirt and the like. And they go to the vacuums, and in the vacuums they are cooked and it goes through the long coolers which whip the molasses on down to the centrifugals where your brown sugar is separated from your liquid form, the brown sugar into bags in the warehouse.

Q. Well, is this machinery heavy or light?

(Testimony of C. C. Crozier.)

A. Most of it is exceedingly heavy machinery.

Q. And on stone foundation?

A. Most of it is on heavy reinforced heavy concrete blocks. [1550]

Q. Now, you spoke a while ago in your testimony in regard to your assessing work. I believe you called it chattels.

A. Yes.

Q. Why?

A. Personal property. By definition of the law it says that certain items—and we could come down to a plantation—that certain items for tax purposes would be treated as personal property, machinery and equipment and the like.

Q. Does that go for the pumps?

A. It does.

Q. Used in irrigation systems? A. It does.

Q. How about road bridges and railroad bridges?

A. Railroad bridges, the bridge itself, the structural part, the wooden part of the bridge, the structural part is real property; the ties and rails and block systems, switches, are part of the machinery and equipment of the lessee or the corporation.

Q. And that is, you say, according to the provisions of the law?

A. The provisions of the law.

Q. Now, in making these valuations for assessing purposes, what did you take into consideration?

A. Well, the law applies—

Mr. Rathbun: May we object to that, what he takes in for [1551] assessing purposes? It has noth-

(Testimony of C. C. Crozier.)

ing to do with this case, making valuations for assessing purposes.

The Court: The objection is good.

Mr. Vitousek: Well, if the Court please, that is something that has to do with this case in that it shows his knowledge of the plantation and knowledge of the various factors, and later on when he gives his view, if he does, for the purpose of this case it would show his familiarity with this property. It's all confined to the Honolulu Plantation Company.

The Court: Well, I think you can bring that out without getting into assessing for tax purposes. What you want to get at is his knowledge of this plantation, I repeat, without getting into the assessing features. The objection is good.

Q. In connection with your work, have you made any study of the investments required in a plantation property?

A. In order to get at the unit rates for our purposes, a plantation has to be studied, and under the provisions of the law it gives us the opportunity to review the plantation from so-called three angles, as I have heretofore stated. One is the sales of land, which is so-called market value. We can capitalize the rents of the different leases, or make a study of the different leases and screen them to find if the rents per acre can be established. And in the absence of either sales or rents, we can go to what is known as the productivity method, as I stated heretofore, that you take [1552] the sugar

(Testimony of C. C. Crozier.)

and sell it, the gross realization from the land, deduct the operating expenses, and we arrive at a net profit. We take the net profit and allocate it to operator and landlord and we take the landlord's share and capitalize it to reflect his earning power, or his share of the use of that land. All these studies have been made of the principal plantations. Bear in mind, many plantations are what is known as marginal or lame duck plantations. Where there is no earning, there is nothing to capitalize. So that we have to go to the other tests of market value, either sales or rents, or the opinion of people.

Q. Well, have you made a study of the investments required to operate a plantation, capital required? A. Yes, we have.

Q. Does it vary or not between leasehold and fee simple? A. It does.

Q. Which is the greatest?

A. The plantation upon the ground — the fee land.

Q. Now, have you related such a study to the Honolulu Plantation? A. Yes, I have.

Q. Mr. Crozier, assuming on January 21, 1944, the Honolulu Plantation Company had approximately 4,400 acres of cane land, both fee and leasehold—to be exact, 4,397.34 in use—and that on that date 1,087.59 acres of cane land were taken [1553] away from it, what in your opinion was the fair value of all the properties of said plantation before the taking and the fair value of all the properties of said plantation remaining after the taking,

(Testimony of C. C. Crozier.)

excluding moveable personal property and growing crops, taking into consideration your knowledge of the plantation, its holdings, the manner in which held that you referred to in your previous testimony?

The Court: May I have that question?

(The reporter read the last question.)

Mr. Rathbun: I object to that, if your Honor please. In the first place, he hasn't shown qualifications to go into any subject as that. He never valued a plantation other than the Honolulu as far as the record shows; used January 1, 1944, as their date when, as a matter of fact, the takings involved in this case are not on January 1 but at varying dates.

Mr. Vitousek: June 21st.

The Court: You said January.

Mr. Vitousek: If I did, I'll—

The Court: Do you want to change it?

Mr. Vitousek: If the Court please, I was reading from a question which said June 21st. If I said January, I was misreading it. It should be June 21st.

Mr. Rathbun: Well, I make the same objection as to June 21st. There is no series of 13 cases that began on June 21st, 1944, that the record shows; it shows that they were all of [1554] different dates. Therefore, a taking of one set of acreage on one date would create one situation and later taking any piece would create another situation.

The Court: On that particular point, how about

(Testimony of C. C. Crozier.)

this motion of the granting of the order to consolidate the cases?

Mr. Rathbun: Well, the consolidation doesn't change the date, but the taking. That was to consolidate them for trial.

The Court: I'm not too sure.

Mr. Rathbun: Further than that, he hasn't shown that he is familiar with the conditions in many respects. One of them is the terms of the leases in these cases, all of which enter into this question.

Mr. Vitousek: Now, if the Court please, it is shown that he is familiar with it from the returns made by the two parties. Also from the examination of these reports which give all that information. And if he is not familiar sufficiently in their opinion, that's a matter for cross-examination to show the weight of this testimony. Insofar as that issue is concerned, he has also shown his long period of study of plantations, of their operation, of value, both under the old enterprise-for-profit method which required a valuation as a whole, and under the new statutes. It is shown that he has been called as an expert in testifying in court in regard to these properties making up the plantations, not the plantation as a whole but property making up the plantation. He has shown his familiarity with that. And as to the date of taking, if [1555] the Court please, he has been asked that date because of the order of this Court made on motion, and without opposition said the cases shall

(Testimony of C. C. Crozier.)

be tried as if all the takings were involved in one proceeding. Under that we believe the first date is the date to be taken. If it matters, any other date during that period of time, to be confined at least to the date these suits were filed. Now, if there is to be any other date contended for, that there were takings under the so-called Military Governor's orders, even that is something to come up in the Government's case, not ours. We are assuming only that the cases here as filed fixed the date and certainly that is a material factor. The first taking in these series of cases was June 21st. There is one that ran, I believe, to December. But all the major takings—the other only involved a very small area as shown in the exhibits—occurred over approximately a 6-month period, June 21st to January 18th, I believe, of 1945. So they were filed almost uniformly in one month apart. But under the order, the order consolidates them and treats them as if there was one proceeding. And we believe that the first date of taking, therefore, becomes, or the first suit filed becomes the important date.

The Court: Is there anything so far to show that this witness has any specific knowledge of the terms of the individual leases under which this plantation operates?

Mr. Vitousek: If the Court please, he has testified that [1556] in the returns, both the owner and the lessee submit their classifications to leasehold or not; as to the length of the term of the lease, it shows in the exhibits.

(Testimony of C. C. Crozier.)

The Court: Yes, but the specific terms and conditions of the individual leases is quite a different matter. He can acquire and utilize the knowledge to what you refer to without knowing the terms of the leases. I don't think there is anything that shows that he knows the contents of these various leases. That may, however, go to the weight. I don't know.

Mr. Vitousek: I could ask that question. It's the length of the terms that counts, and that's shown in the exhibits.

Mr. Rathbun: It's the length of the term that counts with us; that's just exactly one of the main points about his knowledge of these leases. How did he treat them, as being in existence or out of existence and what term did he treat them as having?

The Court: Well, there are two ways of going at this, of course. The way we have been operating was for the witness to give all of the reasons in advance rather than on cross-examination. I am going to sustain the objection to the question on the ground that so far there is no showing that this witness has any detailed knowledge of the specific terms and conditions of the various leases under which this plantation operates. [1557]

Mr. Vitousek: If the Court please, we note an exception.

The Court: You may have an exception.

By Mr. Vitousek:

Q. Mr. Crozier, in your work did you have oc-

(Testimony of C. C. Crozier.)

occasion to study the leases involved in the Honolulu Plantation? A. I did.

Q. And how about the terms of the leases?

A. I am fairly familiar with them. I reviewed them.

Q. You have seen them?

A. I have seen all the leases. I have a copy of most of the leases. If not, I have a digest of some of the shorter leases.

Q. But in arriving at your opinion, you did have them?

A. I had the details of the various leases of Honolulu Plantation in making the study of the Honolulu Plantation for the purposes; also in the different condemnations of the Honolulu Plantation beginning with Hickam Field; we then had the then leases.

Mr. Rathbun: I object to Hickam Field. It is not involved in this case at all.

Mr. Vitousek: If the Court please, he's using it simply as an example of the study of the leases.

Mr. Rathbun: An example of the study of other leases doesn't show that he studied these.

The Court: I think it would be best that we confine [1558] ourselves to the leases involved in these 13 cases. That part may go out.

A. Well, I am familiar with the leases, that for the years in question, 1939 to 1944.

Q. The leases that were in effect during those years?

A. That's correct, such as they are.

(Testimony of C. C. Crozier.)

Mr. Rathbun: May I have the date?

(The reporter read the previous question.)

Mr. Rathbun: I object for that reason, the date itself, limiting it to January, '44.

The Court: Your objection to that is what?

Mr. Rathbun: The record shows that to January, '44, and excludes the very case we are working on.

Mr. Vitousek: He didn't say "to".

The Court: I think he did.

Mr. Vitousek: Well, you can move to strike.

The Court: You objected to it and it has already been asked and answered.

Mr. Rathbun: Well, I move to strike it, of course. That follows:

The Court: Not necessarily, Mr. Rathbun.

Mr. Rathbun: Well, I move it now.

Mr. Vitousek: If the Court please, if there is any question about it, I thought I said "through." I'd like leave to withdraw the question. There is no question but what we [1559] are confining ourselves to this date, June 21, 1944.

The Court: I don't exactly see why this answer should go out. It may later form a basis for an objection. But if the witness has said that he is only familiar with these leases up to 1944, well, what he has stated may be material. I am going to overrule the objection, the motion to strike, and you may have an exception.

Q. As of the date of this taking, June 21, 1944, are you familiar with the leases in effect as of that date?

(Testimony of C. C. Crozier.)

Mr. Rathbun: I object to that as incompetent, irrelevant and immaterial because there is no such date as that that is material in this case. It is the varying dates that are the takings here.

The Court: May I have that question again?

(The reporter read the last question.)

The Court: Your objection again to that question?

Mr. Rathbun: My objection is that there is no reason in this record for taking June 21, 1944. He is taking it for different times, 13 different cases. The taking of each acre of land, according to their theory, would change the situation.

The Court: In view of the order of consolidation in this case, that objection is overruled.

Mr. Rathbun: Well, for the record I will state that in answer to the Court's position on that that there is nothing in the consolidation order, as far as we are concerned—it's [1560] our contention—that changes or has anything to do with fixing the dates of takings.

The Court: You may answer the question.

A. Yes, I am familiar, if that is the date, June 21, 1944, I am familiar with the leases then existing of Honolulu Plantation.

Mr. Driver: Is the witness going to be permitted, your Honor, to impeach his own statement? Just a few minutes ago his testimony was specifically limited to leases up to January, 1944. After your Honor's ruling he is asked by counsel if he doesn't want to push that up until June, and he

(Testimony of C. C. Crozier.)

says yes he can do that. I don't think the witness should be permitted to do that in view of his point blank answer.

Mr. Vitousek: If the Court please, we are getting a wee bit technical in this case. The witness obviously, if he said that date, gone through '44, he can be asked what he meant by it. It's done frequently, the same as when I was reading directly from my notes and the Court said I said January and I have it right there June 21st. I can show it to counsel. That's getting a wee bit far-fetched in a case of this importance to make that kind of objection. In the first place, it isn't material. The witness can be asked if he gives an answer which counsel thinks is not right; he can be asked to straighten that out by appropriate questions, and that's what we are doing. [1561]

Mr. Driver: You can't impeach your own witness.

Mr. Vitousek: I am not impeaching our own witness.

Mr. Rathbun: That's what you think.

The Court: Proceed.

Q. I'll give you this question, Mr. Crozier. Assuming that on June 21, 1944, Honolulu Plantation Company had approximately 4,400 acres of cane land, both fee and leasehold, to be exact, 4,397.34 in use, and that on that date, 1,087.59 acres of cane land were taken away from it, what in your opinion was the fair value of all the property of said plantation before the taking and also the fair value

(Testimony of C. C. Crozier.)

of all the property of said plantation remaining after the taking, the property referred to being that at Aiea, Oahu, and excluding movable personal property and growing crops, taking into consideration your knowledge of the plantation, its holdings, the manner in which held?

Mr. Rathbun: I object to that for the same reasons that we objected to the original question.

The Court: The objection is overruled and you may have an exception. You may answer the question.

A. I would like to make a statement prior to answering the question, and that is——

Mr. Rathbun: I object to that at this time. The question calls for an answer, not a statement of the witness, unless he answers the question. [1562]

The Court: Can you answer the question?

The Witness: I can.

The Court: Please do so.

A. Well, without going into all the details, in my opinion that there is a diminishing value before and after of approximately 20 percent, or interpreted in dollars and cents about a million dollars.

Q. How did you arrive at that?

A. From my knowledge of Honolulu Plantation——

Mr. Rathbun: First I move to strike the answer, if your Honor please, for the sake of the record, on the grounds that I stated in objecting to the question.

(Testimony of C. C. Crozier.)

The Court: The motion is denied. You may have an exception. Now, the question was, How did you arrive at that figure? You may answer that.

A. I should imagine in my own opinion to answer it in details would take about two weeks.

Mr. Rathbun: We've got lots of time here.

Mr. Vitousek: Well, perhaps you don't understand the purpose of my question.

Mr. Driver: Maybe he does.

Mr. Vitousek: Maybe that.

A. From my own experience of other plantations and this plantation specifically, and as I understand Mr. Vitousek's question that the plantation has gone from something to something, [1583] that the thousand and eighty-seven acres is the decrease in area between the periods,—I understand that the after value is as of June 22nd, June 21st being the date of taking—but as I listen to the conversation here that these takings are of previous dates, that prior to June 21, 1944, different areas were taken, the total area is 1,087 acres, so that we've got to go back to a certain date to set up our before. And I assume that the before is June 21st and the after is June 22nd, that it was simultaneously taken and the plantation has been reduced by its 1,087 acres. We do know that the plantation of 4,400 acres is an enterprise of certain characteristics, and that the process of taking takes place, and that as the process of taking takes place there is a diminishing value somewhere. That can be ex-

(Testimony of C. C. Crozier.)

pressed in tangible items and intangible items. The tangibles so-called being the business enterprise or the over-all picture. The acreage itself is about 25 percent, a thousand, a little less than 25 percent. According to my figure, on one of our exhibits, from our records, it's 23 percent. And it appears to me that from my experience and knowledge of the situation that under this so-called before and after that on June 21, 1944, you have a plantation of 4,400 acres and its enterprise set-up being "X" value. We can say it's worth four millions of dollars, if I can use the so-called thousand dollars an acre rule. And on June 22nd, the day after they find themselves with a [1564] thousand acres less, then their over-all is worth three million, or the difference between the before and after is one million dollars.

Q. What is this thousand per acre rule that you mentioned?

A. Well, it's one of the methods that can be developed as the rate per acre for a leasehold plantation insofar as the value of money in an enterprise, in its capital as a leasehold plantation, to operate and produce sugar. And that will vary with the size and many factors in it. But I should imagine that the 30, the 25,000 ton plantation, as a leasehold, would require for a thousand dollars per acre of capital to carry on its enterprise, starting with the virgin land and taking the land and weeding it, fencing it, and the ditches and everything else that goes with the enterprise. So that if you use that rule, that would represent a thousand

(Testimony of C. C. Crozier.)

acres at a thousand dollars and would be a million dollars diminishing.

Q. Well, you stated you were familiar with the mill in this enterprise?

A. Yes, I have been in the mill many times.

Q. I want to ask you whether or not in your opinion that mill was as valuable and on the same assumption of takings after the takings as well as before the takings?

A. Well, in my opinion, no. [1565]

Mr. Rathbun: May I have that?

(The reporter read the last question and answer.)

By Mr. Vitousek:

Q. You stated that this was an irrigation plantation? A. I did.

Q. Had irrigation ditches, lined and unlined?

A. Pump system, both reservoir from water sheds and tunnel development and pumps.

Q. Bearing in mind the assumption that I gave, the acreage taken, I will ask you if in your opinion the property forming the irrigation system was as valuable after the taking as it was before?

A. It was not.

Q. Now, did it have a road system, bridges?

A. Yes, the main roads, feeder roads, and of different type, some semi-paved, and as they got into the vehicle transportation, field to mill, the roads became more substantial.

Q. And you say bridges?

(Testimony of C. C. Crozier.)

A. There were bridges, flumes, and all other plantation property for the purpose of growing cane in the different areas.

Q. Well, referring to the roads and bridges and other structures forming a part of the transportation system, in your opinion would those remaining on the lands after the [1566] taking be as valuable as they were before the taking?

A. Of course it largely depends upon the—in the aggregate of less value.

Q. In the aggregate? Mr. Crozier, did you have anything to do with arriving at the values of the lands involved in these cases belonging to the Damon Estate in this particular case?

A. You will have to give me the civil numbers.

Q. Civil 514, Civil 521, Civil 525, 527, 529, 532, 533, 535, 536, 540, 544, 548 and 684.

A. I did not have anything to do with the appraisal of any of these lands; that my relations with the Federal Government as appraiser stopped shortly after the war, save and except areas, two other areas, that are not within this area at all, that is, Pearl City peninsula and the so-called perimeter.

Mr. Rathbun: May I have that answer?

(The reporter read the last answer.)

By Mr. Vitousek:

Q. Did you have anything to do——

A. Later on I had a request, in view of my former status as an appraiser of other Damon land

(Testimony of C. C. Crozier.)

and other land of Aiea Plantation, and I was requested by the Navy to get the Navy Real Estate Department and Mr. Sam Damon, who had recently been discharged from the Navy, and found that Navy [1567] condemnations were pending, and I went into the whole matter and I submitted a report to the Navy Department which was, as I understand, was taken as a basis for the settlement of the Damon Estate condemnations. I also submitted a similar report for a settlement with the areas taken by the Army from the Damons, except that there is one of the items that was excluded, that is, the three hundred odd acres, the Army hospital.

Q. Well, did the report contain any appraisal of values of the land?

A. It reviewed the various values of the Government appraisers. It reviewed the Damon's contention of value. It further reviewed the Territory's values, which I served as an appraiser for the Territory in similar lands of the Damon Estate, all part of this national defense acquisition, such as John Rodgers Airport and other areas.

Q. And give a conclusion?

A. I did. I made a recommendation which I understand was taken as a basis of settlement.

Q. Now, did you in your conclusion of the values and recommendations take into consideration or place any value on improvements on land not involved in the takings? A. I did not.

Q. Or did you in any way consider, include any amount as damage due to severance?

(Testimony of C. C. Crozier.)

A. Did not. [1568]

Mr. Vitousek: If the Court please, it's 11 o'clock.

The Court: All right, we'll take our next recess.

(A short recess was taken at 11:00 a.m.)

After Recess

The Court: Proceed.

By Mr. Vitousek:

Q. Mr. Crozier, in connection with these lands shown in your Exhibit No. 14, the land there shown as agricultural, does that include sugar cane land leased? A. It does.

Q. Now, you say you made a study of the land holdings and tenures, land dealings?

A. Yes.

Q. What do the estates do with these lands to get income from them?

Mr. Rathbun: I object to that as incompetent, irrelevant and immaterial what these estates do with these lands, other than anything involved in this law suit.

Mr. Vitousek: If the Court please, it comes back to the original proposition that the way these estates derive their income, that they continue to lease them and it is their practice to renew the leases.

Mr. Rathbun: I know of one in this case that wasn't renewed.

The Court: Let's stick to the point that is before the Court.

A. Well, in the early——

The Court: Just a minute. I am still thinking

(Testimony of C. C. Crozier.)

about the [1570] objection. I am not too well satisfied as to the materiality but I am going to allow the question to be answered. You may have an exception. Now you may answer it.

A. As a general rule the lessors renewed the lease to the plantations, and especially in our rural areas we find in the lease, we find two things in the lease, and one is describing the demised premises to be leased, and second is a provision under rentals. As a rule we find a base rent which is predominating, that old leases had, and no other additional rent. As these leases were renewed to the first plantations, as I say, there was a better description of the property being leased, and in addition to the minimum rentals a percentage over and above that for additional rental by reason, I presume, of the prosperity of the plantation itself, its better price of sugar, its better earnings, and the sharing of the profit of the plantation.

Mr. Vitousek: That's all, if the Court please.

The Court: Cross-examination?

Cross-Examination

By Mr. Rathbun:

Q. Mr. Crozier, you are assistant, you are Deputy Tax Commissioner of the Territory of Hawaii, are you not?

A. I am. That's my official commission.

Q. And you are paid a salary in that position?

A. I am. [1571]

Q. By the Government of the Territory or the United States?

(Testimony of C. C. Crozier.)

A. By the Territorial Government.

Q. Your services day to day require your time and attention in that office? A. They do.

Q. A full day's time?

A. That's the law, from 8 to 4 and from 8 to 12 on Saturdays.

Q. How many hours have you put in working on this set of schedules and going over your testimony with anybody connected with the Honolulu Plantation or C. Brewer and Company in this case?

A. Well, that would be hard to estimate, Mr. Rathbun. I put in many an hour in the Government by reason of—in the field in the early studies of the plantation, from 5 in the morning until late at night; conferences with the Legislature and conferences with different people.

Q. I'm talking about this case, what you are testifying to here.

A. Well, confine me to dates, Mr. Rathbun.

Q. Any date that you please. I don't know what date you started to work on this that you testified to here in these schedules that you prepared, the exhibits in evidence.

A. Oh, I should imagine over a period of time since [1572] Mr. Courtney first contacted me.

Q. Mr. Courtney contacted you in connection with this trial? A. He did.

Q. This trial? A. No, he did not.

Q. That's what we are talking about, the cases in this trial.

(Testimony of C. C. Crozier.)

A. Well, I presume the time spent on the exhibits that I have introduced, I should imagine about three hours.

Q. On the exhibits? A. Yes.

Q. Have you talked with any of the lawyers about the testimony you were to give?

A. On the Exhibit 14? Yes, I have. I have talked to Mr. Vitousek and talked with you.

Q. How much time did you put in on that?

A. Well, I had two meetings with Mr. Vitousek, I presume the first meeting about an hour and the second meeting about a half hour.

Q. Now, Mr. Crozier—when did you first meet Mr. John J. Courtney?

A. In his first trip here, I believe in the trial of Barbers Point, Civil Case 432, I believe, and that was tried in July of 1941. [1573]

Q. And what was the first business that you had with Mr. John J. Courtney?

A. I had submitted a report as a Government appraiser in the Barbers Point Airport, and upon the arrival of Mr. Courtney to try the case, prior to the case, we went into a conference. That was followed by the trial in which I testified for the Government; followed later by trial of 436, Civil case 436. I believe I went on the grounds with Mr. Courtney. In Civil case 452, Aiea hospital. At the time that Mr. Courtney was here, the question of severance damages over and above the value of the land and improvements thereon was gone into, along with growing crops. I presume from his

(Testimony of C. C. Crozier.)

arrival in '41 until his departure in October of '41, considerable time was spent with him during working hours, after working hours, Saturdays and Sundays.

Q. Did you make appraisal reports in those cases that you mentioned at the request of Mr. Courtney?

A. Yes, I was one of the appraisers in 432, which is Barbers Point. I was one of the appraisers in 436, which is the Damon gore lot on the makai side of the road. I also appraised for the Hickam Field extension, which is a housing acquisition just outside the Navy gate. I also appraised for the Government the Aiea hospital site of 452.

Q. Any of those involve any Damon land?

A. 436 did. [1574]

Q. Any of them involve any lands on which the Honolulu Plantation Company had leases?

A. 436 did.

Q. Did you make an appraisal report on 436?

A. I did.

Q. Did you find any severance damage?

A. I made no report on the severance damage.

Q. You didn't find any, did you?

A. I made no report on it.

Q. Therefore, you didn't find any?

A. Well, I think the answer speaks for itself.

Q. You didn't make any finding on it?

A. I made no finding on it.

Q. Who was Mr. John J. Courtney at the time he hired you in these cases, as you understand it?

(Testimony of C. C. Crozier.)

A. Mr. John J. Courtney, as I understand, was Special Assistant United States District Attorney General.

Q. He was here in that capacity, was he not?

A. He came out to try the Barbers Point case, as I recollect, in the early part of '41.

Q. And he also had charge of these other cases that you mentioned where you had something to do with it? A. That's correct.

Q. In the same capacity?

A. I guess, yes. [1575]

Q. You saw Mr. John J. Courtney about a Congressional hearing that was going on in connection with some claim of the Honolulu Plantation Company involving the takings in this case, did you not? A. Yes, Mr. Courtney arrived here——

Q. Well, Yes answers it. When did you first talk to Mr. Courtney on that subject?

A. I presume two or three days prior to October 20, 1945.

Q. In what capacity were you talking? Was Mr. Courtney here at that time?

A. Well, my relations with Mr. Courtney were one of appraiser and he was the Government's attorney at that time, and we had many a session——

Q. In '45 was he a Government attorney?

A. In '41.

Q. I'm talking this time in connection with the Government claim.

A. Well, I presume when Mr. Courtney got back

(Testimony of C. C. Crozier.)

in '45, by reason of our relationship asked me if I wouldn't testify before this Committee, that he was out with relatives——

Q. Will you please answer my question. What capacity was he here in at that time?

A. Well, I presume he was attorney for the Honolulu Plantation. [1576]

Q. Didn't he tell you that?

A. No, I got it by deduction.

Q. Well, you knew it, then, didn't you?

A. Yes. He didn't specifically tell me "I am attorney of the Honolulu Plantation."

Q. Did you have any reason to believe that he was representing anybody else than the Honolulu Plantation Company?

A. No, I assume he was the Honolulu Plantation Attorney.

Q. You never had any reason to doubt it since, did you, that he was?

A. No, sir. That's what was his mission.

Q. He went over with you in that capacity, representing—he wasn't with the Government at that time, was he?

A. I believe not.

Q. You went over at that time with him several of the cases that you had worked on with him, did you not, discussing the claim of the Honolulu Plantation Company with him?

A. Why, the interview that I had with Mr. Courtney in '45 was rather of short duration, and whether or not——

Q. Whether short or long, will you please answer the question?

(Testimony of C. C. Crozier.)

A. I presume, Mr. Rathbun, some of the cases that I have been associated with him in '41 and prior were taken up.

Q. Well, were they or were they not?

A. I should imagine they were, Mr. Rathbun.

Q. What is your recollection about it?

A. They were, then.

Q. Well, all right; they were, then. Those are the very cases in which Mr. Courtney had hired you, some of them, that you have named here by civil numbers, and on which you were paid a fee by the United States Government, were they not?

A. That's correct.

Q. Have you been subpoenaed in this case?

A. I have not.

Q. You came here by the request of whom?

A. Mr. Vitousek.

Q. You came voluntarily, then? A. I did.

Q. Your position, Mr. Crozier, when you obtained it in the Tax Office, was that of a political job?

A. Well, all positions in government are political except the protection of Civil Service which we now have. My position at the original point was strictly an appointment of a department head, which I presume is political; as the Tax Commissioner would go, I would go.

Q. Now, in getting the position you had to have support of some of the influential people here, did you not?

A. Not at all. I believe I got my position by reason of my ability and experience and standing

(Testimony of C. C. Crozier.)

in the community [1578] and the assistance of the Honolulu Realty Board.

Q. You don't think that any of the influential people here, politically or business or otherwise, could in any way make your position uncomfortable for you if they saw fit to do it, that you are occupying now?

A. Oh, I believe they could endeavor to do so, Mr. Rathbun.

Q. They could, couldn't they, if they endeavored to do so?

A. Why, yes. Anybody in position, in government, has to be thick-skinned and subject to employment such as ours, and so forth, both Territory and County.

Q. In giving your opinion that you have given in this case, on this before and after theory, did you take into consideration at all that prior to the takings involved in this case, the Honolulu Plantation Company was an integrated enterprise engaged in a perfected synchronization of an agricultural industrial activity?

A. May I have that again?

(The reporter read the last question.)

A. Well, I am quite clear on the before and after, but the central integrated part is rather broad in scope. I think all those adjectives that you used are incorporated in the before and after premise of valuation.

Q. Then you did take those things into consideration? [1579]

(Testimony of C. C. Crozier.)

A. In which case they were taken into——

Q. Did you take them into consideration?

A. I did, then.

Q. All right. Did you take into consideration, in coming to that opinion, the amount of dividends that had been distributed to stockholders, the shareholders, going back to 1908 and respectively to 1924?

A. No.

Q. Not at all?

A. Except that we were cognizant of the dividend record.

Q. You what?

A. I was cognizant of the dividend record.

Q. Yes, I suppose you were. But did you consider it in arriving at this opinion you have given? That's my question.

A. Indirectly, yes.

Q. What do you mean by indirectly?

A. Well, part of the before and after value is earnings, and all other factors, so that a dividend record of a corporation is considered.

Q. In other words, it had some weight in arriving at the 20 percent or one million dollars difference that took place before and after in helping you arrive at that opinion of amount, did it?

A. Yes, it did.

Q. Did you, in arriving at that opinion, consider that [1580] the company, the Honolulu Plantation Company, in 1936 renewed or extended most of its major leases to 1965?

A. Yes, we considered on the before and after; it was a growing concern.

(Testimony of C. C. Crozier.)

Q. You considered that?

A. That's correct.

Q. And did you consider the property involved in these cases in connection with the Damon lease, that that lease was in effect after the date of its terms as shown by Exhibit 9-K in this case?

Mr. Vitousek: If the Court please, we object to that question. It is not a proper statement of the evidence. It shows there was a lease that expired in 1943 and a new lease from then to 1953.

Mr. Rathbun: I said by its terms, on the lease itself.

The Court: The objection is overruled.

A. Under the—may answer to the before and after in the setting of the amount is predicated on the basis that it was a growing concern and had these areas and could continue to carry on these areas as a sugar enterprise.

Q. Well, I'm much interested in that, but that isn't my question, Mr. Crozier. What you are stating doesn't answer my question. It isn't the purpose of the question. Do you understand the question? A. May I have it again? [1581]

Q. I will ask you again, in considering as you have said that you did, that 1936 the company renewed or extended most of its major leases to 1965—is that right? A. That's correct.

Q. Now, in that consideration, did you assume that in June 21, 1944, the date that you have used here in your opinion, that it had a lease on the properties belonging to the Damon Estate which are involved in these law suits?

(Testimony of C. C. Crozier.)

A. My before and after is predicated on the loss of a thousand acres. Now, I don't know exactly how much of the Damon acreage is of the thousand. If it's a part of the thousand acres, then it was considered.

Q. If you don't know the amount and assume that they didn't have a lease in June 21, 1944, of the Damon land involved in these cases, that would make quite a difference in your opinion, wouldn't it?

A. It would.

Q. And you don't know about that? No information on it?

A. Except that I am assuming that the thousand acres, the difference before and after, as I testified, is part of the enterprise area, can enjoy it as part of their enterprise.

Q. Do you know how much acreage was involved that belonged to the Damon Estate covered by the lease, Exhibit No. 9-K in this case? [1582]

A. I do not.

Q. Did you consider, in arriving at your opinion of value, the amount of money spent by the company in additional capital improvements and betterments in three years following the new leases?

A. Yes, that was a factor that came up.

Q. That means from 1936, then, doesn't it, as you answered that that was the date?

A. That is correct.

Q. You assumed that, didn't you?

A. No, we knew it to be a fact that the company,

(Testimony of C. C. Crozier.)

had subsequent to '36 put considerable additional capital in many items, principally their housing village, their plant, and other items.

Q. For instance, in 1937 if they put in a million dollars, that would have an effect and did have an effect upon your opinion, is that right?

A. It would.

Q. Is that right? A. It would.

Q. If they didn't put in but five hundred thousand, your opinion would be different than it would be if they put in a million?

A. No, it wouldn't.

Q. It would not? [1583] A. No.

Q. How much did they spend in 1937 for additional capital improvements and betterments?

A. I did know, Mr. Rathbun.

Q. Do you know now? A. I do not know.

Q. Can you give your opinion?

A. I do not know the exact figure as I sit here.

Q. How much did they spend in 1938 for the same purpose?

A. I don't know the specific figure.

Q. How much in 1939?

A. I don't know the specific figure.

Q. How much in 1940?

A. I don't know the specific figure.

Q. How much in 1941? A. Same answer.

Q. '42. A. Same answer.

Q. '43? A. Same answer.

Q. '44? A. Same answer.

Q. Did you take into consideration in arriving

(Testimony of C. C. Crozier.)

at this opinion that you have given that in June of 1939 there commenced a series of takings in which cane lands were lost to [1584] the United States and others, and that those losses continued up to the first of the consolidated cases and including the lands in the 13 cases being on trial here?

A. No, as I understand the question of Mr. Vitousek, as June 21, 194——

Q. Never mind Mr. Vitousek. Just answer my question.

Mr. Vitousek: If the Court please, he has a right to answer the question.

The Court: Please answer the question directly if you can, and then, if there is an explanation, you may give it.

A. I should imagine if you go back to 1939, Mr. Rathbun, your damage would be greater.

Q. I didn't ask you that. I asked you if you took into consideration what I asked you in arriving at your opinion.

A. Well, as I understand Mr. Vitousek's question, I stated that my opinion there was a damage of a million dollars.

Q. I heard that very distinctly.

A. Now, that million dollars has nothing to do with the takings of 1939.

Q. Then will you answer the question? Did you consider the takings other than those in these 13 cases on trial here? A. I did not.

Q. You don't think it would be the proper way

(Testimony of C. C. Crozier.)

to approach them, to consider those previous takings?

A. Well, bear in mind I am only confined to a picture [1585] of 4,400 acres versus 3,000 acres.

Q. I understand. But will you answer my question, please?

A. Why, I should imagine if they were brought into the picture there would be a greater damage.

Q. Did you give anything in this case because of any takings other than those involved in these 13 cases on trial?

A. Just these cases covered by a thousand eighty-seven odd acres.

Q. And the reason that you didn't is because you didn't think it should be done to arrive at the opinion that you have given, is that right?

A. I wasn't asked that.

Q. Well, I'm asking you now. Do you think it would be proper to do that to arrive at the decrease in value for these taking?

A. You mean by these takings back to '39?

Q. In these cases involved here.

A. Well, you are confining me to a certain acreage.

Q. Sure, I'm confining you.

A. If you will allow me to ask me to increase the acreage back——

Q. Will you please answer my question? That's all I can allow, Mr. Crozier, I'm sorry.

A. Well, then, I don't quite understand you.

Mr. Vitousek: If the Court please, we object

(Testimony of C. C. Crozier.)

to this question. It's an attempt to impeach a previous question. He's got a right to test his knowledge as to what he took into consideration. He says he has. He did not go back to this day.

Mr. Rathbun: This goes back to his reasons as to why he did or did not do these things.

Mr. Vitousek: And we submit it is not proper cross-examination.

The Court: Do you want the question read?

(The reporter read the question referred to.)

The Court: Do you understand the question?

A. I presume these taking—you are going back to 1939, aren't you?

Q. I am not. I am going to these cases. Please read the question again. You are writing there; no wonder you don't understand the question.

A. You talk about these questions——

Q. In these cases on trial.

A. Why, yes, certainly, as the basis of your opinion, it would, before and after——

Q. How would that affect your opinion?

A. The opinion stands, for it is in these cases of consolidation, as of June 21, 1944.

Q. But you know, don't you, that as a matter of fact [1587] all of the cases previous to the ones involved in these law suits were settled, and either the judgment of the Court that was entered released as against all claims and demands of any nature, or else the stipulation by which they were settled, as far as Honolulu Plantation Company was concerned, provided that? You know that, don't you?

(Testimony of C. C. Crozier.)

Mr. Vitousek: If the Court please. We object to that question as improper cross-examination. The records in those previous cases will speak for themselves. That's a very controversial issue, as counsel well knows. It's bringing up nothing that was brought up on direct. It's not cross-examining any matters involved in this case. The witness has testified as to what he took into consideration, and as to his knowledge of the action of this Court or counsel of previous cases is not proper cross-examination.

Mr. Rathbun: In answer to what counsel well knows, that that is a controversial issue, I don't know of any such thing. They settled for everything in this that was ever taken from Honolulu Plantation Company, and the records of this Court show in the cases on file in the Clerk's Office—everything except these 13 cases. Now, if this man took into consideration those other cases that were settled and released, all claims of any kind or nature, I have a right to know it. The other man did.

The Court: Well, whether they are or are not settled [1588] depends on what is on the record here in these cases.

Mr. Rathbun: Well, I am stating, your Honor, that is what is on record.

The Court: And that involves a legal question. But you may ask him what he knows about that and what he considered it to be.

Mr. Rathbun: That's all I'm after, what he knows about it. And I don't think it's a legal ques-

(Testimony of C. C. Crozier.)

tion. It's plain language. Nobody has ever raised any legal question on it.

The Court: There seems to be one here.

Mr. Rathbun: Pardon me, your Honor, may I ask him in what respect that particular thing is in question?

The Court: You and Mr. Vitousek don't seem to agree.

Mr. Rathbun: The record shows that he's wrong. They're on record. The Court takes judicial notice of its own files. We can get them if your Honor wants to see them.

The Court: I have seen them.

Mr. Vitousek: Counsel knows very well that this was an issue before the committee that came out here, and the United States representative who tried the case went on the stand himself and testified contrary to what counsel is now telling the Court.

The Court: I don't know anything about that. We are getting away from the point of the question.

Mr. Rathbun: It's not what he testified. What the [1589] judgment shows is that it was complete satisfaction of all claims. That's final, no matter what anybody testified.

The Court: The witness may answer the question.

A. Mr. Rathbun, I presume you are pertaining to the stipulation that was entered into between the Government and Honolulu Plantation, of which

(Testimony of C. C. Crozier.)

some two hundred thirty-eight or two hundred thirty-nine thousand dollars was paid. Now, I don't know for sure.

Q. Not these cases on trial, you understand that, that are on trial? You understand that, don't you?

A. I understand that that stipulation does not include these. Now, just what that stipulation covered, what condemnation suits that I was involved in, I'm not sure.

Q. I didn't ask you the ones you were involved in. I asked you about your knowledge about that settlement.

A. I have very little knowledge about the settlement.

Q. You never heard about any that released all claims and demands?

A. Except that the document was presented to me at this House hearing here. It's the first time I ever saw it.

Q. You never heard it talked about with anybody?

A. No, no.

Q. Never in your life?

A. Mr. Wickam never talked to me about it at all. I have no idea of how—— [1590]

Q. You found it out in connection with that claim when Courtney was here, the Government claim?

A. That's the first time that I saw the stipulation.

Q. Well, you saw it then, didn't you?

A. I did.

(Testimony of C. C. Crozier.)

Q. And that was before you made up your mind to an opinion that you testified to here, wasn't it?

A. Well, that was after I had already made up my mind.

Q. Before you testified here, though, wasn't it.

A. Today.

Q. Yes. A. Yes, certainly.

Q. Now, did you consider again, in the face of those judgments and stipulations, that you knew about that in June of 1939 that there commenced a series of takings in which cane lands were lost to the United States and others and that the losses continued up to the first of the consolidated cases being tried here?

A. Cane lands lost to the United States?

Q. Well, read it again.

(The reporter read the last question.)

A. What lands of the United States did the United States lose?

Q. I didn't say they lost any. I didn't say that.

A. May I have that question again? [1591]

(The reporter reread the last question.)

A. I don't understand your question.

Q. You don't understand?

A. I can't understand how the United States lost it.

Q. I didn't say the United States lost it. I said lost it to the United States.

Mr. Vitousek: If the Court please, we don't like to object to this question but we submit it is not intelligible. How can you lose to somebody else? It may have been taken.

(Testimony of C. C. Crozier.)

Mr. Rathbun: I don't know.

Mr. Vitousek: We don't know either.

Mr. Rathbun: We had an expert testifying to it that way. I wondered how he knew, too.

The Court: Well, to those of us who have been with this case from its start, that phrase has a meaning. It may not be intelligible to someone else. If the witness says he can't answer the question——

Mr. Rathbun: He says he doesn't understand it. That answers the question.

Q. You don't understand that question?

A. You're getting too involved for me, Mr. Rathbun.

Q. Supposing that in 1940 the United States took 500 acres of land by a condemnation suit, just assume that, if you please, the year 1940, and that that suit was settled by a judgment in the Court in which the judgment recited that it [1592] was in full of all claims and demands and damages resulting to the Honolulu Plantation Company because of the taking involved in that case, would you consider that in arriving at how much had been depreciated in value the lands involved in 13 cases in this hearing?

A. Yes, I should imagine it will affect my million dollars finding.

Q. How would it affect it?

A. Well, my million dollars finding is confined to a thousand acres. But prior to that you now set up that in 1940 there was another five hundred. I should imagine it would have some effect on it.

(Testimony of C. C. Crozier.)

Q. What effect would it have? You are the one that knows, on your opinion.

A. Well, it all depends, Mr. Rathbun, on many factors in my opinion.

Q. What are the factors?

A. You'd have to then go back to your date of 1940 and set up a premise of before and after versus the premise of June 21, 1944, before and after. And I made no study of that. I'd have to.

Q. You said you took it into consideration, didn't you?

A. Well, mine is an over-all picture; my experience goes further back than that.

Q. Please stick to the question, Mr. Crozier, and [1593] we'll get along so much faster. Will you answer the question?

A. Well, I think I did. I endeavored to say that if you are now going to put in the 500 acres it would change my picture of the so-called before and after damage.

Q. I didn't ask you if we are going to put it in. That wasn't my question. I told you to assume the fact that that had happened the way it did, namely, once more, there had been 500 acres taken in a law suit by the United States Government to condemn some land; a judgment was entered in that case and a release, and judgment was in full for all claims, damages of any kind or description arising out of that condemnation in 1940, would you consider that circumstance the fact that they took that land, that it was released, and the payment that was

(Testimony of C. C. Crozier.)

made, and the judgment that was entered that was in full release of all the claims and demands, would you consider that in arriving at the before and after value of the land involved in the 13 cases on trial. If so, to what extent?

Mr. Vitousek: If the Court please, that is a double question. Why couldn't we leave that alone?

Mr. Rathbun: Leave out the last. All right, I'm trying to save time. Leave out "to what extent."

A. Is your 500 acres in these suits? They are not, are they?

Q. It's not in these suits. That's my assumption. [1594]

A. Then your 500 acres of 1940 would have no effect on my million dollars estimate.

Q. Now, you finally answered. And you didn't consider, therefore,—asking you the question again—that in June, 1939, there commenced a series of takings in which cane lands were lost to the United States and others and that those losses continued up to the first of the consolidated cases being tried here? A. I did not.

Q. That wouldn't be your method of arriving at the valuation of the before and after in these cases, would it? A. It would not.

Q. It would be wrong, wouldn't it?

A. I'm not here to say whether it's right or wrong.

Q. What do you consider——

A. It's my own opinion.

Q. —that it's wrong? A. No.

(Testimony of C. C. Crozier.)

Mr. Vitousek: If the Court please, that's improper cross-examination. He said that's his opinion. Now he is testing what other people think. He is entitled to think what he meant.

Mr. Rathbun: I want to find out.

Mr. Vitousek: It's very clear that he had not taken it into consideration. [1595]

The Court: Proceed.

Q. Did you consider in arriving at your opinion that you have testified to here that following the takings in 1939 the company was able to make replacement of cane at higher elevations, cane land, replacement of cane land? A. I did not.

Q. Do you think that's a proper item to be taken into consideration in arriving at the value of the before and after in these cases?

A. I do not.

Q. I notice in Exhibit 16 that you have identified here, made up by you, that as of January 1, 1935, the Honolulu Plantation Company had under lease 4,811.73 acres of land, cane land; that on January 1, 1939, they had under lease 4,929.55 acres of cane land, which is more than they had on hand January 1, 1935. There were condemnation suits taking Honolulu Plantation land between '35 and '39, were there not? A. There were.

Q. How do you account for the fact that they had more after those takings in 1939 than they had in 1935?

A. These figures of January 1, '35, January 1, '39, are the areas in cane under lease by the Hono-

(Testimony of C. C. Crozier.)

lulu Plantation, and that's the areas that are growing cane. Now, in '35 they might have had 5,200 acres of—4,811 acres of cane and some potential cane land. [1596]

Q. Did they?

A. They, the Honolulu Plantation, had additional areas that from time to time they could go to.

Q. How much in 1935 out of the 4,811 acres was that kind of land?

A. Well, the 4,811 acres is actually the area in cane.

Q. That's what I thought. Now, therefore your statement is immaterial, isn't it?

A. There's a plus acreage to that.

Q. Never mind any plus acreage. I'm asking you about that particular acreage, 4,811.73 acres.

A. Is what they had in cane.

Q. And also 4,929.55 is what they had in cane in '39, isn't it?

A. That's correct.

Q. Now, how do you account for the fact that they had more in 1939 than they had in '35, although the Government had taken acreage away from them in those years in condemnation suits?

A. Well, between the periods of '35 and the end of December, '38, they had gone on to other areas and developed this cane land.

Q. They were able to get other areas to develop to replace what the Government had taken?

A. No, I don't think it was areas that—that they [1597] already had under lease in 1935 was not used as cane.

(Testimony of C. C. Crozier.)

Q. Well, how did they get the additional land with the Government taking some of it away after '35?

A. Well, they just increased their acreage of certain Bishop Estate areas or McCandless lease area.

Q. You mean by additional lease?

A. No, same areas under lease.

Q. Some vacant land that they had?

A. Some land that was potential cane land in '35.

Q. How much potential cane land did they have January 1, 1935, that was not actually in cane?

A. I haven't any idea.

Q. You never tried to find out?

A. Only a limited area to my knowledge.

Q. Well, by limited—you have no idea, then you say it's limited?

A. A couple of hundred acres.

Q. What?

A. Maybe four or five hundred acres.

Q. In '35? How much did they have on January 1, 1939?

A. I should imagine about, maybe three hundred acres that they could find.

Q. In arriving at your opinion that you have testified to in this case, did you consider the book value of the company at various times as shown on their books? [1598]

A. Well, I was fairly familiar with the books——

(Testimony of C. C. Crozier.)

Q. I didn't ask you that. Did you consider it, is my question?

A. Well, I had it in mind, yes, Mr. Rathbun.

Q. What's that? A. I had it in mind, yes.

Q. Then you gave it consideration?

A. It was part of the findings.

Q. And it is part of the material on which you based your opinion of value, before and after, that you have testified to? A. It is.

Q. In arriving at the opinion that you have given here, did you take into consideration the earnings during the years prior to the takings in this case?

A. Yes, that's part of the study.

Q. And it had an effect upon your opinion of value, did it? A. It did.

Q. Your valuation was based in part, in other words, upon the earnings from year to year of this company?

A. One of the items in forming my opinion, yes.

Mr. Rathbun: May we take a recess now, your Honor?

The Court: Yes.

(A short recess was taken at 12:00 noon.)

After Recess

The Court: You may proceed.

By Mr. Rathbun:

Q. Now, Mr. Crozier, you have testified as to your source of information about these various things, among other things to certain appearances and schedules, certain appearances made by owners

(Testimony of C. C. Crozier.)

and lessees, schedules filed by them before your tax body, is that right? A. That's correct.

Q. Just what does that schedule that they file show? Are those public records?

A. They are.

Q. What do they show in general?

A. We tax in rem to the owner or owners thereon, and the owner comes in and identifies these parcels by our mapping system and checks out his nature of title of a color of title, whether it's a Land Court or L.C.A. or a grant and admits the area on the parcel. They advise us that the property is under lease, or occupied or tenanted by certain individuals or an individual. And we turn, if it's large areas, especially in rural areas, we turn to the lessee or occupant or tenant, whoever it might be——

Q. Is this in the schedules, now?

A. Yes. And they classify them as to the different types of land by reason of use, cane, pineapple, or ranch, [1600] what it is, attributable areas that go with it, as I have heretofore stated, and any other areas that are not part of the enterprise; that is, the occupant submits that.

Q. And from that schedule you may agree or disagree with the classification, is that correct?

A. Yes. In the early stage we disagreed considerably but we find out——

Q. Do you or do you not? A. We do.

Q. Then do you have hearings, have oral hearings, people making their contentions orally on it?

(Testimony of C. C. Crozier.)

A. On classification, no. It is a matter between the tax office and the owner or the lessee.

Q. Well, the owner or the lessee, do they make an appearance there and give you their contentions that your classification is wrong?

A. We generally call them in and tell them their classification is wrong.

Q. And do you allow them to argue against it?

A. They do; we do.

Q. And you have quite protracted hearings on that, do you not?

A. Yes, and we go to the grounds and try to solve the problem right on the grounds.

Q. Is there a court reporter present at those hearings [1601] to put down the contentions of the property owner?

A. No, that's strictly informal conversation between tax payer and assessor.

Q. There is no record made and there has been no practice made by the tax office to record the contentions made orally by an owner in regard to his assessment valuation for tax purposes, no record of it that anybody can go over and look at to see what they contend?

A. Not at that stage.

Q. At any stage?

A. Yes, we have had certain cases where we have disagreed on classification and rate, the applicable rate to the classification, and that is in the Tax Appeal Court, and that's a judicial court of record with stenographic and reporters' notes.

(Testimony of C. C. Crozier.)

Q. That's after it gets away from your office?

A. That's correct.

Q. As far as your office is concerned, there is never any record made of that?

A. None at all.

Q. That anybody could look at?

A. That's correct. Anybody can attend but there is no written record kept of these interviews.

Q. So anyone wanting to look it up afterwards to find out what they had contended as to certain things as you had [1602] assessed as to valuation, there is nothing to look at afterwards as a record?

A. Except their classification.

Q. Except their schedule of classification?

A. That's correct, and ours.

Q. Did the Honolulu Plantation Company ever appear before your tax body in regard to the taxation on the land involved in these cases on trial?

A. They have.

Q. Did you have any controversies with them or disagreements as to classification?

A. We did.

Q. Did you have any hearings on it?

A. Yes, we had conferences on it and went on the ground and endeavored to solve the classification problem on the ground.

Q. No record of what took place there that anybody can get was made of record?

A. No. The differences never went to litigation insofar as our Tax Appeal Court.

Q. They made certain contentions, did they, about the value of their lands?

(Testimony of C. C. Crozier.)

A. Both, as to classification value, yes.

Q. Did you go into the question of invested capital with them on those hearings at all? [1603]

A. That is, partly; that is a separate item, Mr. Rathbun, that came in to a study of the cane land values that were established for taxation purposes.

Q. Yes, I understand that.

A. That's correct.

Q. Will you answer my question?

A. It was considered.

Q. You had such hearings on that?

A. Yes, we reviewed their capital structure and their assets and the items that constitute the real property values—personal.

Q. In 1936 did they produce evidence, and was there discussion of their capital investment that year in connection with taxation?

A. I am not sure what year, Mr. Rathbun, but I believe every year we have had some dispute or argument with Honolulu Plantation.

Q. In regard to capital investment?

A. Not specifically.

Q. Well, generally?

A. Indirectly, yes, but the main argument being classification of their lands.

Q. All right. That's fine. The main argument. But did they represent to you in 1945 what their claimed capital investment was? [1604]

A. They did not.

Q. Did they in 1944?

A. Yes, I believe in the year, in the latter part

(Testimony of C. C. Crozier.)

of '44, the plantations were re-studied for revaluation purposes.

Q. Will you answer my question, please?

A. They did.

Q. Did you take into consideration in arriving at the opinion that you have testified to in these cases the capital investment of this company over the different years?

A. In our study of determining the average over-all rate for Honolulu Plantation it was taken into consideration.

Q. Did you go into the book value of the permanent investments in those hearings of the Honolulu Plantation Company?

A. Insofar as the buildings, no, because the book value of buildings is not in accordance with the provisions of the law to arrive at tax value for the improvements.

Q. Will you please answer my question?

A. They were considered, Mr. Rathbun, and eliminated where they didn't affect tax values.

Q. They came before you and stated what they contended was the book value of the permanent investment, is that right?

A. No, not that one figure, no, certainly not.

Q. Never did that?

A. No, that has nothing to do with our— [1505]

Q. Did you consider that at all in the opinion that you have arrived at in this case?

A. The one figure, no.

Q. What do you mean by one figure?

(Testimony of C. C. Crozier.)

A. You're talking about an aggregate over-all figure?

Q. I'm talking about the book value of permanent investments.

A. Which items? Certain items, yes.

Q. What items did you consider in that respect in your opinion?

A. If you will let me have a corporation exhibit, I'll pick a number of them out.

Q. I don't know what "corporation exhibit" means.

A. Will you let me have the annual statement of Honolulu Plantation for the year in question?

Q. Yes, you may have them; they are right there. A. You refer now to the year what?

Q. I didn't confine it to any year yet. I have asked you if they brought that out before you in these tax hearings.

A. Well, our last study was in the latter part of '45.

Q. All right, did they bring out the book value of the permanent investments?

A. Yes, we had the statement of 1944 available for use in our study.

Q. You remember what it was? [1606]

A. Offhand I do not.

Q. At the time you testified to your opinion in this case, did you have in mind what they claimed the book value of permanent investments were?

A. I was—

Q. In 1945?

(Testimony of C. C. Crozier.)

A. —I had knowledge of it, Mr. Rathbun; the specific figure, I don't.

Q. Can you give what it was that you took into consideration and what amount?

A. Well, insofar as our land study, we took in their book value of their land—related.

Q. You know what permanent investment means, don't you? A. I do.

Q. Well, that's what I asked you. How much was it in '45?

A. I haven't any idea of the figure, Mr. Rathbun.

Q. How much was it in '44?

A. I have no idea, no idea of the figure in '44.

Q. Still you considered it in arriving at your opinion of value in this case, is that right?

A. That's part of the factors, yes, sir.

Q. How about '43, what was it?

A. Same thing.

Q. '42 the same thing? [1607]

A. Same answer.

Q. '41 the same? A. Same answer.

Q. '40 the same thing? A. Same answer.

Q. Did you ever consider in connection with arriving at this opinion of value that you have testified to the possibilities of this mill being used for something other than the production of raw sugar?

A. Yes, for the simple reason that during these various times the mill was doing other things than raw sugar.

Q. Did you ever make a study to see what the

(Testimony of C. C. Crozier.)

possibilities were if they stopped making raw sugar? A. No.

Q. Have you ever thought about it?

A. Yes, I have my own ideas.

Q. They make molasses and they have for several years, didn't they for several years, molasses as a by-product of sugar? A. Yes, sir.

Q. Do you know any other by-products that that plant could be used for?

A. Cane syrup for hot cakes and the like.

Q. Many other fields in which the plant might be used other than developing raw sugar, isn't that right, in your [1608] opinion?

A. In my opinion, yes, it had possibilities for other activity.

Q. As a matter of fact, did you consider in arriving at your opinion that this company, Honolulu Plantation Company, in 1940 produced raw sugar at a cost per ton of \$54.62?

A. Yes, that cost of production is rather an important equation in our so-called productivity formula.

Q. If it cost them more to produce raw sugar than they could have bought it for, you'd take that into consideration in arriving at your opinion?

A. I wouldn't, Mr. Rathbun, I wouldn't go outside the scope; I'd be inclined to stay within the scope of the enterprise itself.

Q. Well, isn't that the enterprise itself, to develop raw sugar?

A. You sort of got the bull by the tail. You've

(Testimony of C. C. Crozier.)

got a plantation and you've got your own fields and your areas, and you have your competitor down the street—

Q. Will you answer my question, please?

Mr. Vitousek: He is entitled to explain his answer.

Mr. Rathbun: He hasn't made an answer. There's nothing to explain.

Mr. Vitousek: He did make an answer. He said he wouldn't go outside the enterprise. [1609]

The Court: Let's start all over again and have one person talking at a time.

By Mr. Rathbun:

Q. Would you and did you consider in connection with your opinion and in arriving at your opinion that you have testified to in this case that it cost the Honolulu Plantation Company in the year 1940, \$54.62 per ton to produce raw sugar?

A. I did.

Q. Now, why did you consider that?

A. Well, that's a rather important factor as the cost per ton of sugar.

Q. Why? A. Well—

Q. Insofar as your opinion is concerned.

A. —\$52.60 cost—there's a net profit per ton of sugar over the gross realizations; that's a low production of \$54.62.

Q. And that has an affect on the before and after?

A. That would affect earnings and many factors, what rent they could pay.

(Testimony of C. C. Crozier.)

Q. That would affect your valuation of before and after that you testified to?

A. Indirectly, yes, Mr. Rathbun, certainly.

Q. And if they produced raw sugar at a price which was greater than they could bring it, than they could buy it for, that would affect your opinion, too, wouldn't it? [1610]

A. No, I doubt if it would, because they've got to stay within their enterprise. You can't go afield and say we'll go down to Ewa and buy Ewa for half and close up what we've got.

Q. Supposing they did go outside, whether you like it or not, and buy raw sugar?

A. Well, if it was physically present and the like, it might be taken into account.

Q. Would you take it into account, and did you take it into account?

A. How much, one ton or 90 percent of their products?

Q. Supposing that it cost them in the year 1940, \$54.62 a ton? Supposing it cost them in 1940, \$54.62 to bring the sugar to a refined stage, whereas they could buy the raw sugar and bring it in at \$51.88, would that have any effect upon your opinion that you have testified to?

A. That would depend upon many factors, as to the amount and who they buy it from, and what is the stability of flow—

Q. Who to buy it from if they buy it for less?

A. How are they going to buy? How long?

Q. That's a fact—let's assume, it please.

(Testimony of C. C. Crozier.)

The Court: Just a minute. Just a minute, let the witness answer the question and then you ask your next question.

Mr. Rathbun: If he'll answer it, I'll get along fine, but he doesn't answer them. That's the trouble. That's what [1611] makes the trouble.

The Court: You cause more trouble by asking additional questions before the witness answers one question.

Mr. Rathbun: Well, that's my way of directing my attention to what he's driving at.

The Court: I realize that, but it causes confusion.

Mr. Rathbun: Well, I don't know any other way of doing it.

Mr. Vitousek: If the Court please, may I interpose an objection? He was answering and he gave a sensible answer.

Mr. Rathbun: And I contend it had nothing to do with my question.

The Court: Have you finished your answer?

The Witness: Yes.

By Mr. Rathbun:

Q. You have seen the claim prepared by the Honolulu Plantation Company for filing with the Congress of the United States, have you not?

A. I have.

Q. Government Exhibit No. 1 for identification in this case. And you have likewise seen table No. 2 attached to it, have you?

(Testimony of C. C. Crozier.)

A. If this supposition—if this exhibit is the same as I have.

Q. Well, look at it and see. It's the only one I have [1612] and know anything about.

A. If table 2 is the same one as I have, and I presume it is.

Q. What do you mean "you have?"

A. Well, I'll have to get my copy and go through it page for page. There may be an amendment or an adjustment.

Q. You know what you saw, don't you, before you testified in this case?

A. But this is a voluminous book with lots of schedules in it.

Q. I'll guarantee you that.

A. You'll have to wait until I check my copy versus this.

Q. Where is your copy?

A. At the tax office.

Q. Well, I want to ask questions on that, so you had better get it. I can't go any further with it until I connect it up with this particular exhibit.

The Court: How long would it take you to get your copy?

The Witness: About five minutes.

The Court: All right, we'll take a brief recess.

(A short recess was taken at 12:33 p.m.)

After Recess

By Mr. Rathbun:

Q. All right, now? [1613]

(Testimony of C. C. Crozier.)

A. This table 2 on this copy I have never seen.

Q. Never seen it?

Mr. Vitousek: Which copy?

Mr. Rathbun: Marked Government Exhibit 1 that I have asked about.

Mr. Vitousek: That's all I'm asking.

The Court: But this isn't clear. That's the point.

A. My table 2 in my copy is not the same at all.

Q. What copy have you got?

A. I've got a copy. It says "Before the Congress of the United States, Washington, D. C."

Q. All right, where did you get it and when?

A. Mr. Kay gave it to me.

Q. When? A. Prior to 1945.

Q. Prior to 1945? Have you ever seen this one before? Examine it clear through, will you please?

Mr. Vitousek: "This one," I'd like the record to show what counsel means.

Mr. Rathbun: Government Exhibit 1, the one that I'm talking about.

The Court: For identification.

A. I understand, Mr. Rathbun, there was an amended or revised one made, and I have seen it around somewhere, but it is not my copy. [1614]

Q. You have seen what around somewhere?

A. The revised one.

Q. I don't know anything about the revised one. There hasn't been any in this case. I'm asking you about this one now. Did you ever see that one before, Exhibit 1 for identification?

A. I can't say for sure, Mr. Rathbun.

(Testimony of C. C. Crozier.)

Q. You can't say for sure?

A. No, I do know that I have—

Q. Never mind that.

A. —a copy here that has not the same schedule 2, and I understand this one was revised, and you must have the revised one.

Q. Which was revised?

A. The one that you have.

Q. Are you sure of that?

A. I understand this was the first.

Q. You mean by "this" the one that you produced yourself? A. Yes.

Q. That was the first one?

A. The one that I have in my possession.

Q. And the one that I have was the one they finally revised and filed with Congress?

A. I haven't any idea whether they filed it in Congress. [1615]

Q. Well, this is the second one of Government's Exhibit 1, is the revision, then?

A. It must be.

Q. Is that what you say?

A. It must be, Mr. Rathbun.

Q. Then confine your attention to Government Exhibit No. 1 that I am showing you. If it appeared in that document on table 2 attached to that exhibit that raw sugar cost the Honolulu Plantation Company \$51.05 to produce and they bought it in that year from outside people for \$48.48, would that make any difference in the opinion that you have testified to in this case?

(Testimony of C. C. Crozier.)

A. It would not.

Mr. Vitousek: If the Court please, may I have my objection? It does not so appear in the statement counsel is handing the witness. And I think that should be called to his attention. It is the cost of refined sugar and not raw, the figure that he is giving, in his own schedule. Now, if he is making an assumption—

Mr. Rathbun: It says outside raws price paid.

The Court: One at a time.

Mr. Rathbun: I want to show it to your Honor. Argue over what it means—here's what it says. (To Mr. Vitousek) If you will let me do this first. "Cost after credit, outside raws, sugar purchased, 96°, refined made, price paid, \$48.48." [1616] And here is your refined in the next column, as I read it.

Mr. Vitousek: If the Court please, that's all refined.

Mr. Rathbun: Yes, the second column.

Mr. Vitousek: They are not the ones that you are reading.

Mr. Rathbun: What are not the ones I'm reading?

Mr. Vitousek: You gave a figure of the plantation of fifty-four.

Mr. Rathbun: Fifty-one is what I asked him last, and this one. And that's raw.

The Court: I think the question is all right.

Mr. Rathbun: I asked my question.

(Testimony of C. C. Crozier.)

The Court: The objection to the question is overruled. Now, you may answer it.

Q. Your answer was no, is that right?

A. That's correct.

Q. And if the Honolulu Plantation Company in the year 1941 produced raw sugar for \$54.55 a ton and paid \$51.76 per ton for it from outside people, would that in any way change the opinion that you have given in this case? A. It would not.

Q. And in the year 1942, if it cost the Honolulu Plantation \$77.81 to produce raw sugar and they bought it from outside sources for \$70.06, would that make any difference in your opinion or have any effect on it? A. It would not. [1617]

Q. And if in the year 1943 they produced raw sugar for \$70.80 and bought it outside for \$61.79, would that make any difference in your opinion?

A. You said sixty-one? It's—

Q. \$69.79. A. It would not.

Q. And in the year '44, if it cost them \$101.75 to produce a ton of raw sugar and they bought raw sugar at \$71.04 per ton, would that make any difference in your opinion? A. It would not.

Q. Did you take any consideration of the fact, in arriving at the opinion you have testified to here, that this was economically operated company? A. I assumed that.

Q. If they could buy raw sugar for less than they could produce it for, that would not be economic, would it?

A. On the face of that statement, no.

(Testimony of C. C. Crozier.)

Q. That's what I am confining it to, that statement.

A. That's correct.

Q. It would not show an economically operated company, would it?

A. Just confining it to those two figures, no.

Q. It means they are losing \$30 a ton by producing raw sugar themselves?

A. By that arithmetic, yes. [1618]

Q. I show you the same Government Exhibit 1 and ask you whether or not you have ever seen table 9 contained in that exhibit attached to it?

A. Your table 9 in your Government exhibit is evidently a revised one compared to the one that my table is.

Q. The figures at the top of that table are substantially the same as the ones in the table 9 that you have in your document, are they not?

A. So far as the last column is concerned.

Q. The last column under the word "total"?

A. That's right.

Q. And what does that represent as you see it on this document?

The Court: Exhibit 1?

Mr. Rathbun: Yes, **Exhibit 1**.

A. Table 9 is the allocation of depreciated items—table 9 of the Government's Exhibit 1, allocation of depreciated property items to the remaining acreage reflecting measured burdens per acre.

Q. Now, what does your table 9 show as a heading?

A. Book value of property investments.

Q. Now, on the totals for the years 1936 to 1945,

(Testimony of C. C. Crozier.)

not including '45, the figures under the word "totals" are practically the same, are they not, varying a thousand or two dollars, that's all?

A. For the year '44 or '45?

Q. Leaving out '45.

A. Well, if the outside total of '44 is exactly as to the—

Q. Yes, but the rest of them only vary a thousand dollars or so, isn't that it?

A. There's variance all the way through. That's correct.

Q. Can't you look at it and tell whether I am right in that statement?

Mr. Vitousek: We'd like to stop objecting and let it go, but I can't understand this. We object to this line of cross-examination as to the difference of the book Mr. Crozier has and the book counsel has. It's got nothing to do with the case. It's a mere exhibit for identification, and what has it got to do with this cross-examination or any testimony given by this witness on direct examination?

The Court: I don't know at the moment, but it may lead to something. Proceed.

Q. Tell me the difference, if you can't do that the way I did it with my naked eye, just going over the amount in the last column of the total at the top of that table 9 that you have and table 9 that's in Government Exhibit 1 for identification, what your document shows for 1936?

A. \$2,840,716.28, which is the same as your exhibit. [1620]

(Testimony of C. C. Crozier.)

Q. All right. What is there to show for '37?

A. \$2,906,684.47.

Q. Exactly the same, isn't it, as this one?

A. Correct.

Q. '38? A. \$3,128,753.49.

Q. The difference is, is it not, that this Government Exhibit 1 shows \$3,128,735.49?

A. That's right, as against my \$753.49.

Q. Yes. And '39?

A. '39, \$3,355,318.16.

Q. Exactly the same, is it not?

A. Exactly the same.

Q. And in '40? A. \$3,202,458.99.

Q. Exactly the same? A. The same.

Q. '41? A. \$3,024,248.89, the same.

Q. '42?

A. \$2,881,747.77, which is the same.

Q. '43? A. \$2,832,951 even, the same.

Q. No, it isn't the same. This document shows, Government Exhibit 1, \$2,834,591. [1621]

A. Well, you are two thousand dollars more.

Q. A difference of two thousand dollars?

A. Yes.

Q. '44?

A. '44 is \$2,799,410.39, the same.

Q. Now, what does this column of totals under the word "total" on table 9 in Government Exhibit 1 represent as you look at it?

A. I haven't the least idea.

Mr. Vitousek: That's been asked and answered

(Testimony of C. C. Crozier.)

and the witness is entitled to see it again. He read the title. The title speaks for itself.

Mr. Rathbun: That isn't the question. The question is, what does it mean to him? Because he saw the same figures that he had in front of him.

The Court: The question may be answered.

Mr. Vitousek: If the Court please, I'd like to have a further examination. I'd like to run throughout this. It's improper to examine a witness on an exhibit for identification.

Mr. Rathbun: Which I offered to put in evidence.

Mr. Vitousek: It hasn't been received. It hasn't been properly proved yet.

The Court: The objection is overruled. You may have an exception. Now, do you understand the question? Referring to the exhibit for identification, he is asking under that [1622] particular heading that he has previously referred to, what the total figure there means to you.

A. Well, by deductions table 9 says "Allocation of Depreciated Property Items to Remaining Acreage Reflecting Measured Burdens Per Acre." Whoever compiled the statement found some totals representing these odd millions of dollars.

Q. And in the copy that you have, it is called "Book Value of Property?" Now, what do you think it is or what it says on Government Exhibit 1?

A. I haven't the least idea, Mr. Rathbun. I haven't checked these.

(Testimony of C. C. Crozier.)

Q. What did you consider it as in arriving at your opinion of value in this case?

A. I never bothered with this in my opinion in this case.

Mr. Vitousek: What's this, what's this that the witness was referring to? He didn't bother with what?

A. So-called copy that I had from the Honolulu Plantation, as the petition that they filed or proposed to file before Congress, of the Honolulu Plantation.

Q. You testified in this case that among the other things that you considered was the necessary invested capital to run a plantation, did you not?

A. I did.

Q. Did you consider that those figures on table 9 of [1623] Government Exhibit 1 represent invested capital for the years that are shown?

A. I haven't any knowledge of what they mean, Mr. Rathbun.

Q. You never studied those figures in that table that you have in the document that you produced?

A. I read—

Q. Corresponding with these before you gave your opinion? A. That's correct.

Q. If the book value of the permanent investment of this company on January 1, 1945, was \$2,702,044.06, would that change your opinion that you have given in this case in any way?

A. It would not.

(Testimony of C. C. Crozier.)

Q. Assuming that that was the capital investment, would it change your opinion any?

A. It would not.

Mr. Rathbun: May we stop here, Judge? I can't get through.

The Court: Yes, it being one o'clock, we will adjourn for the day and resume tomorrow morning at nine.

(The Court adjourned at 1:00 o'clock p.m.)

Honolulu, T. H., December 20, 1946

The Clerk: Civil No. 514, United States of America versus 257.654 acres of land, and Civil Nos. 521, 525, 527, 529, 532, 533, 535, 540, 544, 548 and 684, for further trial.

The Court: Gentlemen, before we begin this morning, by conference had yesterday we have already agreed with reference to next week, which is Christmas week, that we will not have sessions the day before and the day after Christmas. I overlooked at the time I talked with you on that subject the fact that on Monday next a language school case is coming on for ten o'clock in the morning, for an application for an injunction. I have no means of telling now whether that will take five minutes or five hours or five days. I am wondering, in view thereof, if we should leave Monday free for the handling of that language school matter, and in view of the fact that the week will be thoroughly disrupted whether we should go to our original thought of passing the Christmas week by.

(Testimony of C. C. Crozier.)

Q. What did you consider it as in arriving at your opinion of value in this case?

A. I never bothered with this in my opinion in this case.

Mr. Vitousek: What's this, what's this that the witness was referring to? He didn't bother with what?

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Mr. Vitousek: If the Court please, having been here before in the language school litigation, I don't think it will be five minutes. I imagine it will be a good idea. In that connection I might state that I had talked with the attorneys for the Government, and our next main witness will be Mr. Spalding, and I think it will be very desirable if we [1625] can go on with continuity, that when he starts he finishes up. And I would suggest that when we finish with the witness this morning we can go over to the date fixed by the Court. And Mr. Spalding, incidentally, is very much tied up right now on matters that he was on the coast for, and that would be a great convenience. I think it would be better as far as the examination and cross-examination is concerned.

The Court: What is your reaction to this matter?

Mr. Rathbun: Well, we have no objection to doing it that way. I don't doubt that Mr. Spalding has plenty of matters to attend to today and tomorrow, just getting back.

The Court: Well, then, since it is agreeable to you both, we will suspend today, if we finish today with Mr. Crozier, and so far as this case is concerned it will not be entertained during next week at all but will resume on the 30th day of this month, which is a week from Monday.

Mr. Rathbun: O.K.

The Court: All right. And I assume that you are both ready to proceed this morning.

Mr. Vitousek: Ready.

CHARLES CAMPBELL CROZIER,

a witness in behalf of the Defendants, having previously been sworn, resumed and testified further as follows: [1626]

Cross Examination—(Continued)

The Court: Mr. Crozier, you are mindful of the fact that you are still under oath? You may proceed, Mr. Rathbun, on further cross-examination. By Mr. Rathbun:

Q. Mr. Crozier, you were asked a hypothetical question to assume that on June 21, 1944, the Honolulu Plantation Company had 4,397.34 acres of cane land in use, being fee and leasehold, and on that date 1,087.59 acres were taken by the Government. And you were asked for your opinion of the fair value as to all of the property, before and after, excluding movables and crops. In answer to that you said 20 per cent of one million dollars, is that correct? A. That's correct.

Q. Did you ever make an appraisal report in this case on the question that you have given an opinion on? A. I have not.

Q. Never put anything in writing?

A. I have not.

Q. Will you please tell the Court how you arrived at it? First, what value you arrived at as being the value of these properties before June 21, 1944?

A. On the basis of the Honolulu Plantation being a forty-four hundred acre plantation on June 21, 1944, and all the facts as I have gathered and

(Testimony of C. C. Crozier.)

as I have checked and as I have covered the plantation in my official capacity as a [1627] Territorial employee and as an appraiser for the Government, and at other times in the appraisal of estate lands, all within Honolulu Plantation, the study of its value, going back to the so-called Hickam Field taking and leading on down to June 21, 1944, followed by the taking of a thousand odd acres and the following day having a diminishing acreage—

Q. I didn't ask you about the following day, sir. I asked you before.

A. Well, then, I'll stop there. I have come up to my before value, roughly 4,400 acres, it would require a capital of \$4,400,000.

Mr. Rathbun: May I have that answer?

(The reporter read the last answer)

Q. And you value the market value of the properties of this company on the basis of the capital that would be required to operate it, is that it?

A. I didn't say that.

Q. Well, what did you say?

A. I tried to tell you that from my experience and having followed Honolulu Plantation both from my official capacity as a Territorial employee and appraiser for the Government and appraiser for the various estates, in the association or connection I have had with the area in question, plantation question, in bringing my findings down to a value of the enterprise for the 4,400 acres it would represent a [1628] capital of about \$4,400,000.

(Testimony of C. C. Crozier.)

Q. Now, what do you mean "it would represent a capital?"

A. Well, if on June 21, 1944, you had 4,400 acres and you wanted to produce sugar under the conditions that Honolulu operates in the nature of its enterprise and the like, you'd require \$4,400,000 worth of capital.

Q. Is that the basis upon which you valued this property before June 21, 1944? A. It is.

Q. Then you do base it upon the amount of capital required to operate it, is that right?

A. My idea of the amount of capital, yes.

Q. That's the basis of your valuation?

A. Well, it sums up to that, yes.

Q. Well, that's the basis, then, isn't it? Does anything else enter into it?

A. Well, all the other factors.

Q. Well, what other factors?

A. Well, I tried to tell you, Mr. Rathbun, that you have leaseholds and you have a mill and you have irrigation and you have all the items that make up an enterprise of this nature, that in summing it all up for 4,400 acres on June 21, 1944, you estimate a capital of \$4,400,000.

Q. Well, you mean by capital—what do you mean by capital? [1629]

A. A lot of money that a corporation would require to operate.

Q. And that's your idea of the value of the property, the capital that would be required to operate? A. That's correct.

(Testimony of C. C. Crozier.)

Q. You value this upon no other basis than that, then, before the takings?

A. That's correct.

Q. Did you value that, in giving your valuation, from the standpoint that some purchaser would pay that for it?

A. Where I assume in my—after I have made my deductions and came to my findings, and had arrived at \$4,400,000 of value, that a purchase and sale could be made.

Q. In other words, you assume in that answer that an alleged buyer, interested in buying this sugar plantation, would pay on the basis of the capital required to operate it for its assets, is that right?

A. That's correct.

Q. Is that the usual way to appraise property?

A. Well, I don't know from my experience of any usual way of appraising property. I think a man has to have the ability, he has to have the years, he's got to make a study, and after all he estimates his opinion of value.

Q. He estimates? That's just about what he does, doesn't he? He doesn't figure it on dollars and cents, does he? [1630]

A. Well, eventually your estimate is dollars and cents.

Q. It's a good guess, isn't it?

A. Well, if you want to belittle it to calling it a guess, go right ahead, Mr. Rathbun.

Q. I don't want to belittle anything. I asked you a question, sir. Will you please answer it?

(Testimony of C. C. Crozier.)

A. I don't think it is a guess at all.

Q. You don't think it is a guess?

A. No, I don't.

Q. How much did you value the mill property so-called?

A. I didn't value the mill property.

Q. You didn't go in and study the depreciation of the machinery? A. No, I did not.

Q. Don't you think a buyer, prospective buyer, would do that? A. He would not.

Q. He wouldn't pay any attention to how much worn out the machinery was, how much life it had left?

A. Yes, he'd make an inspection of it.

Q. For what purpose?

A. With the idea of purchasing it, that he'd acquire it. He'd have somebody that would have more knowledge of the mill than he had; he'd ask the man, I presume the mill engineer, or he'd get somebody that was qualified to pass on the kind of [1631] mill and its efficiency and its condition.

Q. Yes? He'd be interested in that, wouldn't he, to know whether or not the machinery is worn out so that it only had, for instance, a couple of years life left, before he paid money for it?

A. If he was a prudent and wise buyer, yes.

Q. You wouldn't do that in making a valuation, though? A. Yes, I would.

Q. But you didn't do it? You took the amount of money required to operate it?

(Testimony of C. C. Crozier.)

A. I understand the mill. I went through it. I know the mill engineer. I have talked to him.

Q. Yes, that's why I asked you what price did you put on it.

A. I didn't put any price on it.

Q. It didn't do any good to ask him all those things?

A. It did. I wanted to know whether I was buying junk or something to operate it as a going concern.

Q. How much did you put on the irrigation system in arriving at this opinion?

A. No specific item on the irrigation system.

Q. Did you try to make a valuation of that?

A. I did not.

Q. Did you try to investigate its condition insofar as depreciation? [1632] A. I did not.

Q. Did you look at the books to see how much it had been depreciated?

A. No, specifically, no.

Q. Did you look at the books to find out what depreciation had been taken on the mill and the machinery in the mill? A. I did not.

Q. So as far as your opinion is concerned, then, if the machinery in that mill couldn't be sold because of its obsolete or worn out condition for five hundred dollars even, you'd still make a valuation of this property including that mill on the basis of the capital required to operate the plant?

A. I'd still come back to my original \$4,400,000.

Q. Will you answer my question, please?

(Testimony of C. C. Crozier.)

A. May I have the question?

(The reporter read the question referred to)

A. Well, I should imagine after reviewing the plant and its efficiency and physical condition and the like, and in the light of possible present day replacement costs, and I found a mill that was only worth five hundred dollars, it might affect my \$4,400,000.

Q. Then you don't know what the mill was worth from that standpoint, do you? You said you didn't make any investigation of it.

A. I knew the mill was in good condition, it was [1633] efficient as it could be; that the question of discounting it down to a five hundred dollar mill never entered into my calculation.

Q. Of course it didn't. But it did in my question, didn't it? You didn't appraise this mill at all, did you?

A. I did not.

Q. Separately from the others? You are going to stick to that, aren't you?

A. That's correct.

Q. What about the rolling stock, engines, cars, etc.?

A. I did not.

Q. You made no investigation of the depreciation on those, their condition, how long they could be operated, how much life they had left?

A. Did not.

Q. That was of no consequence to you?

A. Yes, bear in mind that when I arrive at my four million dollars I know that I am getting cer-

(Testimony of C. C. Crozier.)

tain tangible assets, certain chattels that I have physically seen myself.

Q. Yes. Well, that's what I thought. That's why I'm asking you. Can't you give them a value if you know about them?

A. I didn't value them, Mr. Rathbun.

Q. That's what you said?

A. That's correct. [1634]

Q. You know about them but you disregarded them, is that it?

A. Well, I don't understand your question, "disregarding them."

Q. Well, they didn't enter into your valuation?

A. Insofar as item dollars?

Q. Yes. A. No, they did not.

Q. You just pulled that figure out of air, didn't you? A. I did not.

Q. You didn't base it on the value of any one item in this plantation? A. I did not.

Q. And if you didn't pull it out of air, then what did you base it on?

A. Well, as I understand the question put to me, that on June 21, 1944, there is a plantation, Honolulu Plantation, operating 4,400 acres of cane—

Q. Go on.

A. The following day you've got a thousand acres less. You have a diminishing in your overall enterprise, in my opinion, of one million dollars.

Q. You can't diminish it unless you know the

(Testimony of C. C. Crozier.)

value at the beginning of the year before, can you?

A. I don't know anything about the year before. I'm [1635] talking about the one day.

Q. I'm talking about the day before the take that you testified to. You can't tell anything about the application of what they took unless you know the value of what was there before you took it, can you?

A. Well, you have an idea of an over-all value.

Q. Well, I think you've got an idea. But I'm trying to find out what you are basing it on.

A. All the facts that I have tried to cover with you.

Q. Give me the facts.

A. Well, in the first place you've got 4,400 acres of grown cane.

Q. Yes, yes. They don't own that, do they?

A. They own a few acres of it.

Q. How many acres do they own, how many acres did they own the day before we took the property?

A. I don't know. I presume a hundred acres odd of cane.

Q. They didn't own anything else in cane involved in this case?

A. In these cases, you mean? I don't think they owned any of the fee in cane in these cases.

Q. What other land in fee did they own, in other land that they had the day before the Government took the property?

A. They had the mill sites.

(Testimony of C. C. Crozier.)

Q. How many acres? [1636]

A. I'm not sure. It's around, I think, the mill site is around some hundred acres; and then some scattered areas.

Q. Is that a guess?

A. That's just a guess from memory. I can get the exact figures.

Q. Well, I don't know what you can get. I'm asking you now.

A. Well, then, I'm just estimating from memory, Mr. Rathbun.

Q. Well, you had it in mind when you value the property, didn't you? A. That's correct.

Q. Well, how many acres did you base the value of the land that they owned in fee on?

A. I didn't specifically itemize that item.

Q. And you didn't have it in mind at all and you didn't attempt to value it?

A. I did. I knew when you are going to buy the mill you are going to buy the mill and the mill site, and you are going to buy the acreage.

Q. Yes, I know you are going to buy it. Just because you are going to buy it doesn't mean that you are going to buy it without knowing the value of it, do you? A. I had the specific area.

Q. Well, give them to me if you had them. We want to [1637] know what you based your opinion on. A. That schedule here.

Q. You never had it, did you? A. I did.

Q. What did you do with it?

A. It's over in my office records.

(Testimony of C. C. Crozier.)

Q. Why didn't you bring it here? You knew you were going to be cross-examined, didn't you?

A. Not to this extent.

Q. Did you imagine you were just going to testify to your opinion and be allowed to go?

A. I didn't know I was going to go down to the minute acreage of the reservoirs and the kuleanas and the exact area of the mill site.

Q. You didn't think you'd get into the actual value of this that you testified to?

A. Not to the minute detail.

Q. Well, I'm sorry to surprise you. How many acres of fee outside of the mill site did they own?

A. Well, if you are going into that, Mr. Rathbun, I'll have to get the exact schedule.

Q. Well, I want to know what you had in your mind when you made this valuation.

A. I can't tell you the exact area.

Q. Can you tell what you had in mind when you made your [1633] valuation?

A. Yes. I'm trying to tell you that here was a plantation operating—

Q. Oh, yes, yes. I mean the acreage of the fee now.

Mr. Vitousek: If the Court please, I think the witness is entitled to answer without counsel interrupting all the time. He asked him what he had in mind. He started forth several times and now is telling him what he had in mind. Then he interrupts and gets back to a fee. It doesn't mean he has to have in mind what counsel thinks he

(Testimony of C. C. Crozier.)

should have in mind. If he asked him what he had in mind, he is entitled to answer.

Mr. Rathbun. I'm entitled to have an answer to what I'm asking, not having him wander about in a speech about 4,400 acres that I'm not asking about.

Mr. Vitousek: If the Court please, I suggest that the question be answered. If they want to withdraw it, all right.

Mr. Rathbun: I'm not withdrawing it.

Mr. Vitousek: May we have an understanding that when I'm addressing the Court I'm addressing the Court? I'd like to address the Court in an orderly procedure, but it's making it very difficult. I'm objecting to counsel interrupting when the witness is attempting to answer a question that's been put. That's the basis of my objection. Now, if my understanding of that question is wrong—and I will admit [1639] that we are occasionally wrong in what we understand—I think the question should be read to clear it up. That's my statement.

The Court: We have this difficulty all the time. When you don't get an answer that you expect, you start interrupting with another question.

Mr. Rathbun: Well, if the Court will tell me how to pin this man down like the other witness without doing that, I'll be greatly obliged. When he talks to me and I ask him a simple question about how much fee they own, he starts talking about 4,400 acres. I can't pin him down on what I asked.

(Testimony of C. C. Crozier.)

The Court: You can either move to strike the answer or ask it over again.

Mr. Rathbun: Well, I'll just let him answer and put in all he wants to say.

The Court: What is the last question?

(The reporter read back several questions and answers.)

The Court: It is rather difficult to tell what the question was, in view of the cross conversation. Supposing you reframe the question.

Mr. Rathbun: I want him to tell me what fee this company had that he considered when he gave the opinion of its value the day before the takings in these cases, outside of the mill.

A. I have no idea as I sit here, Mr. Rathbun. I have that filed somewhere. [1640]

Q. Have you any idea of what you had in mind when you arrived at your opinion of the value of these properties, including the fee owned by the company?

A. Specifically?

Q. The day before the takings in these cases.

A. Specifically?

Q. Yes, specifically. A. No.

Q. You don't deal with things like this without being specific, do you, Mr. Crozier, in your experience as an appraiser?

A. No, but you have, by reason of inspection and review and knowledge of the facts that you have covered, you have certain factual information that is balanced in in the end with your opinion, and during all these years leading up to

(Testimony of C. C. Crozier.)

this, and I now am in court and find myself confined to two or three dates—June 21, 1944. In my study the specific date wasn't an actual factor except that it is a before and after on that date now.

Q. Are you through? A. Yes.

Q. Now, will you tell me what factual evidence you had as to the value of the number of acres of fee that they owned outside of the mill property? You say you had certain factual matters. That's the one I'm asking about. [1641]

A. You want the exact acreage?

Q. I want to know what you had in your mind in acreage when you made your opinion.

A. I'll have to get it for you.

Mr. Vitousek: Now, I want to interpose another objection. I followed those questions closely. The first one was value of fee land; the next one, I want to know what you had in mind of acreage. Now, there are two different subjects there. If he's talking about value, let's stay away on value. If he wants acreage, then acreage. The witness has testified repeatedly that he did have these figures but they are in his office. If he wants them, why he can get them. But I don't think it is right to ask the witness on value and then turn right around and ask on fee without giving him a chance to answer the question. That's the basis of my objection.

The Court: I think it is apparent that he is asking him in reaching this opinion as to value before and after what specific fee holdings of the

(Testimony of C. C. Crozier.)

plantation did he have specifically in mind. That's quite clear to me.

Mr. Rathbun: If this gentleman wants to go and get some more papers, I have no objection.

The Court: I think that was the last statement that he made. Do you want to go to your office to get some papers?

The Witness: What I am trying to bring out is—

The Court: You had better not. [1642]

Q. You want to get some more papers before you go further?

A. If you are going to cross-examine me on the specific items of what they had on or about June 21, 1944, in the specific area in the mill site and other items owned in fee, I'll have to get that.

Q. I'm going to ask you every question that I think I should ask to see what you based your opinion on. That might be a lot of questions.

A. Well, I'll endeavor to answer all questions but I'd like to have the correct answers.

Q. I'd like to have the correct answers, too.

The Court: The only question is, do you want to go get some papers that are in your office?

The Witness: Well, if Mr. Rathbun wants the answer of the fee land in the mill site and the fee land in other areas owned by the plantation, I'll have to get that from my office.

The Court: That's what the question calls for, so I will take a recess and let you get your papers.

(A short recess was taken at 9:45 a.m.)

(Testimony of C. C. Crozier.)

After Recess

The Court: You may proceed.

Mr. Rathbun: There is a question pending.

(The reporter read the question referred to.)

The Court: Do you have the question in mind?

The Witness: Yes.

The Court: You may answer it.

A. The fee ownership is 387.905 acres.

The Court: Once again.

A. 387.905 acres of fee land in January of 1944, January 1, 1944.

Q. Did you get that from some list that you have in your hand? A. Yes, I did.

Q. What is that document you have in your hand?

A. That's the real property schedule of the Honolulu Plantation for the year 1944.

Q. Filed in your office as an official document?

A. Compiled in our office as an official document and public document.

Q. Where were those lands located?

A. They consist of 43 parcels of land scattered throughout the plantation.

Q. What valuation did you give those in arriving at your opinion?

A. Specifically, none.

Q. You didn't even consider their value?

A. I knew that they owned this much acreage, had a certain tax value, or could command a certain value. Specifically, the 43 parcels were not

(Testimony of C. C. Crozier.)

valued as to the market on [1644] January 21, 1944.

Q. They had a value, didn't they?

A. They did.

Q. A specific value at that time?

A. They did.

Q. And you didn't consider that?

A. I didn't compute it.

Q. Therefore you didn't consider it on its real value?

A. You mean I didn't set it up as to its market value?

Q. You didn't have it in your mind and base a dollar of your valuation on it, that's what I mean.

A. Well, I knew the plantation on January 21, 1944, coming down to the area in cane and in acquiring it you'd have to account for 387 odd acres of fee land.

Q. In arriving at your opinion of the value of this property, including that land before the take in these cases, you didn't consider the actual value of that fee land? A. I did not.

Q. Now, you said in the direct examination in substance that the mill of the Honolulu Plantation Company was not as valuable after the take as before, did you not? A. That's correct.

Q. What was the value of the mill before the take? A. Specifically?

Q. Yes, specifically. [1645]

A. I have no specific item for that.

Q. And you didn't figure? A. I did not.

(Testimony of C. C. Crozier.)

Q. How did you arrive at the conclusion that it was of less value after than it was before?

A. Well, you had a mill—

Q. If you didn't know that.

A. —well, if you had a mill that would take care of 4,400 acres of cane, of which approximately fifty or sixty percent would be harvested, forty percent would be in the growing crop for the following year, producing 25,000 tons of sugar, the following day you had less area, producing considerably less tons of sugar by reason of the taking of the sugar acreage, your over-all picture is changed.

Q. Would that affect at all the intrinsic value of the machinery in that mill?

A. By "intrinsic value" you mean what?

Q. Don't you know what intrinsic value means?

A. Not specifically.

Q. Not specifically?

A. There's a number of definitions.

Q. Well, answer according to your definition what intrinsic means.

A. Well, I presume intrinsic means, means physical replacement. [1646]

Q. All right. Answer it on that basis.

A. It would cost you—you could determine that it would have a specific cost.

Q. What did you have in mind in regard to that in arriving at your opinion in this case??

A. I had nothing in mind regarding—

Q. You didn't figure its real intrinsic value?

(Testimony of C. C. Crozier.)

A. I did not.

Q. Now, will you answer my question? Would the fact that they had less acreage affect the intrinsic value of that mill property?

A. It would not.

Q. By one cent? A. It would not.

Q. Now, having answered the question as you did, that it was less valuable afterwards than it was before, what was the actual value of it afterwards, the mill property?

A. I have no specific item for the mill property.

Q. You didn't figure? A. I did not.

Q. You didn't sit down and take the rollers and the crushers and the vacuum tanks and the centrifugals and— A. I did not.

Q. —and add them up and arrive at any value on them? A. I did not. [1647]

Q. You stated also on direct examination that the irrigation system was not as valuable after the taking as before? A. That's correct.

Q. Now, just what did you mean by that in items, the irrigation system?

A. Well, I do know from my experience and study that certain ditches had been put in to serve certain fields and certain areas, we will say prior to the taking, with the idea of carrying on the enterprise, only to find that certain areas had been taken away, and had they known at that time they would have had less ditches both in construction and cost and kind of ditch. But they now find

(Testimony of C. C. Crozier.)

Q. What were the items that constitute the irrigation system that you had in mind when you made that answer?

A. Well, I think the maps show the different ditches.

Q. I don't know about maps. What did you have in mind?

A. Specifically, none.

Q. Specifically? All of my questions are specifically.

A. None.

Q. Do you know how many miles of ditch there was in this plantation property previous to the takings in these cases?

A. I did at one time know that, yes. [1648]

Q. Did you know when you made up your mind as to your opinion of value in this case that you have testified to?

A. I did not specifically.

Q. You didn't have any specific figure in mind?

A. No, sir.

Q. Did you know how much of it was a concrete ditch and how many miles of that there were, or how many feet?

A. Prior to the taking?

Q. Yes.

A. I don't know the specific mileage but I did know it at one time.

Q. Well, did you know when you made up your mind on this case as to the opinion of value?

A. I did not.

Q. And you didn't try to figure?

A. I did not.

Q. Were there any flumes in this irrigation sys-

(Testimony of C. C. Crozier.)

tem that you meant to say was of less value afterwards than it was before?

A. I think the flume system of the Honolulu Plantation is just about obsolete as I recollect. At one time they did have a considerable investment in flumes but their fluming procedures decreased and became somewhat obsolete.

Q. You would say, then, when you arrived at your opinion of value in this case that you assumed that on the property of the plantation company that they had before these takings [1649] in these cases no flumes of any value?

A. Yes, there were some certain flume stations on the plantation, as I recollect.

Q. Where were they?

A. I believe they were west or north of the mill.

Q. Whereabouts west and north of the mill? On what field? Or describe them specifically for us.

A. Well, I'd have to get a map.

Q. You can get anything you please.

A. Has there been a map introduced in evidence as to these items such as the ditches and reservoirs?

Q. You're testifying; I'm not. There are the exhibits. You can look at them.

The Court: Do you want to see the exhibits?

A. I don't know which one among the exhibits would have a flume.

Q. Well, you can't tell unless you look at them? If you want to look at them, here they are.

(Testimony of C. C. Crozier.)

A. Could I see the annual report of the Honolulu Plantation of 1943?

Mr. Vitousek: What year?

The Witness: 1943. (Clerk hands a document in evidence to the witness.)

A. As I stated, that at the early stages, as I recollect from my field experience, Honolulu Plantation had certain [1650] flume systems which were being done away with, and there was a flume station near the railroad track, I should imagine half a mile west and north of the mill. But I find no item of flumes on their books or any notation of areas that are attributable for flume right areas.

Q. Are you through now with your answer?

A. Yes.

Q. Regardless of their books, what did you have in mind as to the miles or feet of flume that was on this property that you said was worth less in the irrigation system after the taking than it was before?

A. Specifically, none.

Q. It might have all been worn out, for all you know, then?

A. It might have been, and obsolete.

Q. It might have been obsolete?

A. That's correct.

Q. Have no value whatever?

A. As far as the enterprise, yes.

Q. On the other hand, it might have had a distinct value and a distinct life in years left, is that right?

(Testimony of C. C. Crozier.)

A. Physically, materially it might have had a salvage value or other use value.

Q. It might have had something that somebody razing it might have given a value to? [1651]

A. Maybe so.

Q. But you didn't look into that?

A. I did not.

Q. And still you say it was worth less after the take than it was before?

A. If that—yes, that is correct.

Q. You said that the road system—some of which was paved, some semi-paved—was not as valuable after these takings in these cases now on trial as before, did you not? A. I did.

Q. How many miles of road system did you have in mind when you made that statement?

A. Specifically, I don't know. I didn't have any.

Q. You haven't any idea?

A. I did know the mileage of different types of roads.

Q. Did you when you testified in your opinion in this case and when you made up your mind as to the opinion that you gave in this case?

A. I did not.

Q. You didn't try to ascertain how much road there was in miles or feet on this property?

A. I did not.

Q. People might differ on that, would they not, on the valuation of those roads?

A. That's correct. [1652]

(Testimony of C. C. Crozier.)

Q. If they could be valued separately?

A. Undoubtedly so.

Q. So you can't tell us so that we can cross-examine you on what your idea of the value of the roads was when you made up your mind on the value of this case when you testified as to value?

A. That's correct.

Q. Now, on direct examination you specified the larger machinery in that mill on this property, did you not?

A. I think it was mentioned, the items that constitute the machinery in the mill.

Q. Yes. You mentioned rollers, didn't you?

A. I did.

Q. Now, what kind of a piece of machinery is that roller? Will you describe it in general?

A. Well, it is a series of steel construction, a series of rollers where the cane comes in, two rollers on the bottom meshed one way, and one roll on top meshed another way; and a series of rollers with the engine bed and the pump to operate that part of it which is known as the mill itself.

Q. A big piece of machinery, isn't it?

A. A big piece of machinery.

Q. Cost a lot of money at some time when they bought it, didn't it? A. Yes. [1653]

Q. Do you know how much?

A. And it cost a lot more today.

Q. Do you know how much it cost?

A. I should imagine that all of five hundred thousand dollars, with the mill.

(Testimony of C. C. Crozier.)

Q. Did you have an examination made of that roller or roller system? A. I did not.

Q. To ascertain what the depreciated value was?

A. I did not.

Q. The day before and the day after the takings involved in these cases here? A. I did not.

Q. You haven't any idea?

A. I have this idea, that I talked to the mill engineer at various times prior to this consolidated date relative to his mill.

Q. Yes?

A. And after talking with him I decided that he had a pretty good mill.

Q. Fine. Pretty good mill? Pretty good roller?

A. That's correct.

Q. What did you value it at?

A. Put no value on it.

Q. You didn't have any idea of its actual value when [1654] you made up your mind as to the values you testified to here?

A. Specifically, no.

Q. Will you describe the centrifugal that you mentioned?

A. Well, the centrifugals are machinery that the molasses comes down after it is cooked to its right constituency and goes through the centrifugal for the separation of the molasses from the sugar. The molasses is at a certain temperature. They are put in these centrifugals, which are about three, four feet in diameter and possibly three feet in depth, with a shaft coming down to them holding

(Testimony of C. C. Crozier.)

the bowl. It is a bowl where the molasses in the right temperature is put into it. The centrifugals are spun at a high revolution for a period while crystals of sugar separate from the molasses.

Now, those particular items of machinery or whatever they are, centrifugals, cost a lot of money, didn't they at some time?

A. Yes, they are expensive equipment.

Q. And they depreciate, don't they?

A. Physically, yes.

Q. Physically, yes, from use, don't they?

A. In good bookkeeping you'd depreciate them.

Q. I didn't ask you about bookkeeping. They depreciate physically, don't they, from use?

A. Yes, everything depreciates physically.

Q. They do, don't they? [1655]

A. They do.

Q. Did you try to ascertain how much they had depreciated? A. I did not.

Q. Did you try to ascertain how much they cost?

A. Well, at one time we did go into that.

Q. What did you have in mind when you arrived at your opinion?

A. Specifically, no items of value as far as the centrifugals.

Q. What about the crushers? Will you describe them? A. Well, the crushers are—

Q. That's one of the things you named, isn't it?

A. Well, the crushers are going through a period of experimental stage. The various mills were

(Testimony of C. C. Crozier.)

started out when they went from hand harvesting to mechanical harvesting, and considerable money and experimentation has been done on the so-called conveyors. The crushers, specifically, are the mill itself that crushes the cane through the various rollers.

Q. Is that a large piece of machinery?

A. Not too large. It's out in the open.

Q. Cost considerable money some time?

A. Yes, they have cost considerable money.

Q. It depreciates, doesn't it? A. It does.

Q. Do you know how much it had depreciated at the time you gave your opinion in this case?

A. I do not.

Q. And at the time you made up your mind as to the values you testified to here?

A. Specifically, no.

Q. You didn't try to ascertain it?

A. Of my general knowledge of them—no.

Q. Your general knowledge didn't tell you what it was worth intrinsically?

A. Specifically, no.

Q. To get back to the next big items that you testified to, what other big items of machinery are in that mill?

A. Well, you have the vacuum tanks, the cookers.

Q. I asked you about that, didn't I?

A. No, you asked me about the mill and the centrifugals.

Q. All right, the vacuum tanks.

(Testimony of C. C. Crozier.)

A. After the juices have come through and have been treated by line and through the mud pressers and the like, they go into this vacuum tank where considerable cooking process takes place.

Q. Are those large tanks?

A. They are. They are very large tanks, big supports. They are generally at a higher elevation in the mill, in which the juices are pumped up to take the molasses by gravity. [1657]

Q. At some time or other they cost considerable money, didn't they? A. They did.

Q. Did you try to ascertain the intrinsic value of those and have any figure in mind as to the intrinsic value at the time you made up your mind as to the values testified to here?

A. I did not.

Q. Did you try to ascertain how much they had depreciated through actual use? A. I did not.

Q. What other big item of machinery is in that mill or was in it at the time you made your valuation?

A. In addition to the main units of a mill there are auxiliary units.

Q. Well, the big items?

A. Well, we have covered practically all of the big items, taking the cane in on the conveyors, we have put it through the mill; we gathered up our juice; we have cooked the juice; and we have taken it on down to the centrifugals.

Q. Well, you didn't attempt to ascertain and you didn't have in mind, therefore, any specific

(Testimony of C. C. Crozier.)

value on any of the other items in that mill besides the ones that you have just specifically described when you made up your mind as to the value that you have testified to here? [1658]

A. Other than my knowledge that they had a mill with its component parts to carry on the mill and produce sugar; and then one thing further, in the Honolulu Plantation you have got the refinery.

Q. Well, having that knowledge didn't give you any information on its intrinsic value, did it, the knowledge that you mentioned?

A. That's correct.

Q. You didn't have any knowledge on it when you made up your opinion on it?

A. Specific items, no.

Q. Either before or after? A. Correct.

Q. Now, take the railroad. How many locomotives did they have the day before the takings involved in these cases being tried?

A. The exact number I do not know.

Q. How many cars did they have?

A. I do not know.

Q. Did you try to find out?

A. Specifically, no.

Q. What was the value of the railroad system that you had in mind when you arrived at your opinion of value to which you have testified here?

A. Specifically, no item of amount. [1659]

Q. Railroad rolling stock depreciates, too, doesn't it? A. It does.

(Testimony of C. C. Crozier.)

Q. It has pretty hard use in a cane field, doesn't it?

A. Yes, but maintaining and upkeep somewhat offsets that depreciation.

Q. Well, they reach a stage where they depreciate instead of upkeep?

A. Well, we have some locomotives on some of the plantations that are going 60 years.

Q. Will you answer my question, please?

A. May I have that again?

(The reporter read the question.)

A. I wouldn't say exactly.

Q. What?

A. I said no in some locomotives.

Q. Some locomotives? How about these locomotives?

A. These locomotives are pretty well maintained.

Q. You'd say there had been no depreciation at all?

A. Oh, certainly.

Q. How much was it?

A. I should imagine there are about—they are about 50 percent efficient.

Q. What do you base that on?

A. Observation and efficiency.

Q. And you are imagining, aren't you? [1660]

A. Estimating.

Q. Did you ever sit down with a pencil and try to figure and take the years of life and their use and everything and figure it out that way?

A. I did not.

(Testimony of C. C. Crozier.)

Q. What other things were there that you had in mind belonging to this plantation besides the mill, the machinery, the roads, the irrigation system and railroads?

A. Well, there are many more items in the plantation.

Q. What are you looking at now in that document you have in your hand, Mr. Crozier?

A. This is what is known as the U. S. Government Appraisal, miscellaneous file in my—

Q. Did you appraise any of these properties involved in this case for the U. S. Government?

A. I did not.

Q. Well, that hasn't anything to do with them, has it?

A. Why, you're asking me for other items in the plantation.

Q. Yes.

A. I just want to refresh my memory.

Q. That's fine. But I'm asking you what you are looking at?

A. This is a file that I had on the various Government appraisals that I made prior to these takings that involved [1661] items of Honolulu Plantation and the Damon land and other land.

Q. Yes. Now, what specific thing are you reading from now?

A. An improvement schedule. You have the pumps—

Q. What is the improvement schedule? Describe the document you are reading from, please?

(Testimony of C. C. Crozier.)

A. Well, it was—

Q. What was that schedule that you mentioned?
Just stick to that one.

A. It was a schedule that we made up.

Q. Who made up?

A. It was made up by Mr. Cox and myself.

Q. Who is Mr. Cox?

A. Mr. Cox is an engineer with Alexander and Baldwin.

Q. The U. S. Government didn't make it up, did they? A. They did not.

Q. All right, you are going to use that to testify to answer my question?

A. I am going to pick the items out of this schedule that constitute part of a plantation enterprise.

Q. The schedule that you just mentioned, is that it, made out by Mr. Cox?

A. No, I am going to pick the items out of this schedule that constitute a sugar plantation enterprise, other than the items that you mentioned.

Q. From the schedule that you just described, made up by you and Mr. Cox?

A. That's correct.

Q. All right.

A. If you don't want that, I'll try to do it from memory.

Q. I don't want you to do anything. I just want an answer to my question.

A. I think you have left out pumps.

Q. Pumps?

(Testimony of C. C. Crozier.)

A. You have left out electrical system. You have left out the domestic water system. You have left out the transformers. You left out the fences around the fields.

Q. All right. Fine. Thank you very much for reminding me. A. You included the roads.

Q. We talked about roads.

A. You left out the culverts.

Q. Yes. Anything else?

A. You left out the hospital. You left out—we haven't covered them—the trucks, automobiles and vehicle equipment. The necessary live stocks is part of the enterprise.

Q. What are you reading from now?

A. I am reading from the annual report of Honolulu Plantation, 1943, and the heading is— [1663]

Q. That's Exhibit 13-T in this case, is it not? That's what it's marked, isn't it?

A. That's correct.

Q. All right. Have you finished?

A. Well, there are quite a number of other items—machine shop equipment, lathes, many other miscellaneous items that are part of a sugar enterprise.

Q. All right. Are you through now?

A. I am.

Q. Is that all? Now, to ascertain what some of these items were that you just specified, it was necessary for you to look at the annual report prepared by the Honolulu Plantation Company, was it not? A. May I have that?

(Testimony of C. C. Crozier.)

(The reporter read the last question.)

A. Well, there are a number that I gave from memory and a number I picked out from this annual report.

Q. You couldn't give them from memory?

A. Yes, I think I said from memory.

Q. Not the ones that you picked out of that, you didn't give from memory? A. No.

Q. Did you have that before you when you made up your mind as to the value that you testified to in this case?

A. I had gone over each of the annual statements of [1664] the corporation.

Q. Did you have that in mind in that connection when you made your opinion as to value that you testified to here? A. Specifically, no.

Q. Now, let's take the pumps. Now, you said I omitted them. You weren't asked as to pumps, whether or not they had a lesser value after the taking than before were you?

A. Specifically, no.

Q. Well, or otherwise by direct examination?

A. Why, as I understand Mr. Vitousek's question, it is an over-all picture.

Q. He didn't ask you specifically about pumps, did he? A. He did not.

Q. Now, do you say that the pumps had a lesser value after the date of the takings involved in these cases here than they did immediately before?

A. As a growing concern value, yes.

Q. How much did you deduct in your approxi-

(Testimony of C. C. Crozier.)

mate million dollar figure of decrease in value for the pumps? A. Specifically, no amount.

Q. How many pumps were there?

A. I have no idea.

Q. Immediately before these takings?

A. I have no idea of the exact—

Q. Where were they located? [1665]

A. At different parts of the plantation.

Q. Whereabouts on the plantation?

A. Scattered at lower levels of the plantation, from one end to the other.

Q. Specifically, what fields were they on, do you know?

A. Well, the pumps, the main pumps are not within the cane fields. Some of the booster pumps are in the location within the cane fields.

Q. What have you got in front of you now?

A. I have here a map which shows the map of Honolulu Plantation showing the water supplies and irrigation system.

Q. Where did you get that map?

A. It's part of the copy, my copy of the petition, as I understand, that was presented to Congress and given to me by Mr. Kay, which I referred to yesterday.

Q. Those are some of the things that you worked with Mr. Courtney on, then, is that right?

A. This document?

Q. Yes. A. Not at all.

Q. The map you have in your hands.

A. No.

(Testimony of C. C. Crozier.)

Q. Not at all? A. Not at all.

Q. What kind of pumps were they? Give me the details [1666] of their construction?

A. Well, there are two kinds of pumps, electric pumps and steam pumps. And they take land from certain—either sumps or wells and either put at the same elevation or boost it and then you have the electric booster pumps.

Q. Where were the electric pumps located?

A. Well, specifically below the—one electric pump that I know specifically that I had something to do with, and that was the electric booster pump, below the Navy hospital site.

Q. What civil case was the land included in these law suits that are tried here was that pump located on?

A. None. It was outside the property, an area above.

Q. How many other electric pumps were there?

A. I don't know the exact number.

Q. Did you know when you made up your mind as to the opinion of value that you testified to in this case? A. I did not.

Q. And you didn't try to find out?

A. Specifically, no, no.

Q. Did you examine the pumps, try to find out the depreciated condition that they were in?

A. I did not.

Q. Immediately before the takings involved in these cases here? [1667] A. I did not.

Q. How do you know, then, that they were of

(Testimony of C. C. Crozier.)

lesser value if you didn't know what they were worth before?

A. Well, there was one specific pump that I referred to and that was the pump that was recently installed to take the water and boost it to the land that they had gone on to, new land that they opened up above the 650 foot contour, which is one of their main ditches, which area is now taken by the Navy Hospital under Civil 452. And at that time the question of damages entered into it, and the method of procedure and the like, and from a physical standpoint here was a pump that was put in at an expense to serve a certain area in addition to the area thereto, only to find out, as I recollect, that the area had been acquired by the Navy hospital, and therefore the pump had an overcapacity. And the question that was brought out was, had the plantation known that this area was taken they would have less capital in that same pump, as they eventually found that they had after the land was taken.

Q. They'd have less capital in that same pump? Just how would that take place?

A. Well, instead of having a \$25,000 pump to water the cane above the pump and on into the area taken, and had they noticed or had they realized that this area was taken for a Navy hospital they would have had a \$12,000 pump in it. But as I see the picture, they have a \$25,000 pump, \$25,000 worth [1668] of pump where economically they should have only twelve.

(Testimony of C. C. Crozier.)

Q. In other words, it's an overcapacity?

A. That's correct.

Q. Did you make your valuation in this case on over capacity?

A. Well, that's one of the factors that you might say are physically present. I feel that it is my opinion that the over capacity is a factor which diminishes what you have left as a growing concern.

Q. The reason it diminishes it is because you've got money in there that you can't make an ample return on, isn't it, with the equipment being in over capacity?

A. Well, ample return comes from your product that you sell.

Q. Yes. And from the earnings, doesn't it?

A. And your product is now limited. Well, it all depends what you term earnings.

Q. What do you term earnings?

A. Well, there's gross earnings and net earnings.

Q. Well, let's talk about net earnings, then.

A. Net earnings before taxes?

Q. Yes. A. As to the stockholders?

Q. Yes.

A. In which case, in my opinion, an item such as that [1669] would have to be written down to an economic figure—why there would be no net earnings to stockholders.

Q. That particular pump, now. Let's stick to this pump that you are talking about. That had

(Testimony of C. C. Crozier.)

the same intrinsic value after all this happened about the Navy taking the land than it did before, didn't it?

A. That is correct. The intrinsic value is so-called replacement value or catalogue value.

Q. It could have been moved out and possibly sold and used some place else?

A. That's correct.

Q. Maybe they could have gotten all they paid for it? A. That's correct.

Q. For all you know?

A. That's correct.

Q. Now, what other pumps were there beside that one? A. There were a number.

Q. Where were the other electric pumps located?

A. Well, I believe there's an electric pump at Halawa valley adjacent to fields—they had a pump in Halawa valley and a pump below the mill.

Q. Any others? Electric pumps I'm talking about.

A. Of course, my recollection is all the pumps had been electrified.

Q. All right. How many were there that you had in mind [1670] when you gave your opinion in this case?

A. And a pump in Kalauao district near field 46; pumping plant in Waimalu valley.

Q. Is that all?

A. Yes. As I said, the pumps and the booster

(Testimony of C. C. Crozier.)

pumps are scattered throughout the plantation, and I have cited some of them.

Q. How many booster pumps that you had in mind when you made this valuation?

A. Specifically?

Q. Yes. A. None.

Q. What's that?

A. Specifically the number?

Q. Yes. A. None.

Q. You didn't know? A. I did not.

Q. Now, the ones that you did know about, what were they worth immediately before the takings involved in this trial?

A. I did not value them specifically.

Q. You didn't attempt to find out?

A. I did not.

Q. What were they worth after the takings involved in [1671] these cases on trial?

A. Specifically, I do not know.

Q. All those things also, pumps and the equipment in connection with them, are subject to depreciation through use, aren't they?

A. They are.

Q. Did you make any attempt to find out anything about that before you formed your opinion of value here? A. I did not.

Q. Now, you said the electric system. Describe that, will you?

A. Well, they have poles and lights and transformers in an electric system, both for the manufacturing end of it and the pumps, and then for

(Testimony of C. C. Crozier.)

the domestic lighting system throughout the plantation.

Q. Well, what do you mean, just poles and wire?

A. Transformers, plugs, switches, all the like that constitute their—

Q. Before I ask you the next question on that subject, all of these things that you have described here as being things that weren't asked about, pumps, electric system, domestic water system, fences, culverts, hospital, autos and trucks and vehicular assets, live stock, machine shop, are all things within the scope of the property that you had in mind when you gave this valuation you testified to, didn't you? [1672]

A. They are items that are within that enterprise value.

Q. They are within the things that you valued? They are included in your valuation that you testified to here?

A. In an over-all picture, yes.

Q. Well, I think it's an over-all picture, too, if you insist on keeping using that. Now, how many miles of wire was there in this electric system?

A. I have no idea.

Q. The day before the takings involved in this case?

A. I have no idea.

Q. You didn't know when you arrived in your opinion?

A. I did not.

Q. It might have been one mile or it might have been fifty?

A. That is correct.

(Testimony of C. C. Crozier.)

Q. And you didn't attempt to ascertain the value of it? A. I did not.

Q. Domestic water. Now, what was there about the domestic water system that you had in mind?

A. Well, as I said, as part of a sugar enterprise there has to be domestic water, supply lines, which is your pipes and valves and elbows and joints and nuts and all the spare parts that constitute a domestic water supply system, faucets and endless number of items.

Q. How much of that pipe line and equipment, faucets [1673] and joints, and so forth, was there that you had in mind when you arrived at your opinion in this case?

A. Specifically, I don't know.

Q. You didn't try to ascertain it?

A. I did not.

Q. What was it worth before the takings involved here? A. Specifically, I have no item.

Q. What was it worth after?

A. Specifically, I do not know.

Q. Fences? A. Same thing.

Q. What did you have in mind on fences?

A. Specifically, no items.

Q. What kind of fences did you have in mind?

A. Well, there are all sorts of plantation fences.

Q. Tell us what they were that you had in mind?

A. Well, some plantations in Honolulu have some concrete posts with wires; others, wood posts with wire, except that I presume as time has gone

(Testimony of C. C. Crozier.)

on they found that the concrete post doesn't burn up when they burn cane fields. And after a cane field has been burnt off, you still have your concrete post standing. But most of the fields are either for cattle or for other purposes fenced. And then there's all the other fences that you find scattered throughout the plantation.

Q. Those fences have any value at the dates you gave [1674] your opinion here, or made up your mind as to the opinion that you testified to?

A. That I specifically set up a value, no.

Q. Did they have a value?

A. Yes, they did.

Q. You don't know what it was?

A. I do not.

Q. How many miles of fences was there that you had in mind when you arrived at your opinion that you testified to? A. I have no idea.

Q. You mentioned culverts. How many culverts were there that you had in mind when you made up your opinion here?

A. The number I do not know.

Q. You haven't any idea?

A. Except that having inspected the plantation, here and there throughout the plantation.

Q. But the number of them wouldn't determine their value?

A. Specifically, intrinsically, yes.

Q. All of these things that you are being asked about now that were on this property are things that had value, didn't they?

(Testimony of C. C. Crozier.)

A. That's correct.

Q. And they are the items that you are giving an opinion on as to value of, aren't they, collectively? [1675]

A. They are part of my final deduction, yes.

Q. Included before and after?

A. Yes, in some cases.

Q. In some cases?

A. In some cases they'd have the same value before and in some cases they'd have the same value after.

Q. Now, which cases are those?

A. You'd have some to start in.

Q. I don't know. You made the statement.

A. Well, your live stock would have the same value before and after, your trucks.

Q. That wouldn't be affected by this overcapacity situation?

A. Yes, your trucks would have the same, and many other items that you'd have to go down and eliminate as you go through after you—

Q. Now, what are the other items that you had in mind when you made that statement?

A. Well, we are getting into a field of many thousand items.

Q. I don't know what you are getting into the field of. You made the statement. I'd like to know what you mean by it.

A. Well, it would be all those items off the plantation that would be so-called movable items.

Q. What are those? [1676]

(Testimony of C. C. Crozier.)

A. Well, that's your live stock, your motor vehicle equipment,—

Q. Yes?

A. —your spare parts for all divisions, I presume.

Q. What do you mean by spare parts?

A. Well, you've got nuts and bolts and wire and globes and extra inventory in your warehouse. You have about 30,000 items, I should imagine.

Q. Thirty thousand?

A. I should imagine a plantation has well on to that number of items and parts.

Q. Well, have you named all that you can specifically name now? A. In general, yes.

Q. Now, those items that you have in mind that you mentioned last, live stock and vehicles and this 30,000, are things that had a value which was the same after these takings in these cases as they were before, is that it?

A. That would be my opinion.

Q. And they are part of the assets included within the figure that you gave as to value, are they not? A. That's correct.

Q. How much was the value of those things that you say didn't decrease any?

A. I haven't any idea specifically. [1677]

Q. When you arrived at your opinion you had no idea? A. That's correct.

Q. You didn't make any deduction for those?

A. I did not.

(A short recess was taken at 10:55 a.m.)

(Testimony of C. C. Crozier.)

After Recess

By Mr. Rathbun:

Q. Now, you mentioned the hospital. Where is that hospital located, in the Village of Aiea?

A. No, it is not. It's in the land of Kalauao, which is west of the village.

Q. Adjoining it? A. Yes, adjoining it.

Q. Is that a completely equipped hospital?

A. Yes, it is a new hospital.

Q. All owned by the Honolulu Plantation Company? A. Yes.

Q. You know that, do you?

A. I believe so.

Q. Well, do you know it? A. Yes.

Q. How do you know it?

A. I understand they own the hospital and the buildings and the equipment.

Q. Well, where did you understand it from?

A. Well, I do know that the building is owned and the land is owned by the hospital and the improvement and equipment is hospital property, I believe.

Q. Well, do you know?

A. I would say, yes.

Q. Well, from what, what information?

A. I don't know whether I ever asked anybody specifically.

Q. You just assumed it? A. Yes.

Q. In giving your opinion? A. Yes.

Q. How many beds in the hospital?

A. Specific number I do not know.

(Testimony of C. C. Crozier.)

Q. You never tried to find out?

A. I did know at one time.

Q. Well, did you have in mind any specific number of beds? A. No, I did not.

Q. When you arrived at your opinion in this case? A. I did not.

Q. How about the equipment in the hospital, technical equipment?

A. Specifically, no amount given.

Q. You made no investigation of that?

A. Specifically, no. [1679]

Q. And you didn't have anything in mind as to the value of it when you arrived at your opinion in this case? A. Specifically, no.

Q. Was that hospital worth less or more after the takings involved in these cases?

A. Well, it would be my opinion that the hospital had an overcapacity.

Q. Had what?

A. It had an overcapacity after the taking.

Q. Just explain what you mean by that.

A. Well, a hospital as part of the growing concern for a 4,400 acres over-all plantation, and you find that with 4,400 acres you have a certain amount of hospitalization, and you now find yourself with 3,300 acres, which is less employees, and you'd have less hospital.

Q. And you think just because of the 1,087 less acres that that meant necessarily that there would be less patients and less use for the hospital?

A. That's correct.

(Testimony of C. C. Crozier.)

Q. Supposing they had an epidemic?

A. Well, that would be conjectural, would it not, in any buyer's and seller's mind that would buy this hospital with an overcapacity, and it is too big for the now enterprise that I now have, and I'll take a chance that maybe next year I'll have an epidemic and make a fortune out of the hospital? [1680]

Q. Supposing that prospective buyer was you, looking at it from that standpoint, how many more people would he say it was equipped to take care of than it was equipped to take care of after these takings in these cases?

A. I should imagine, in view of the fact that my general premise is 20 percent, that the overcapacity and over-all picture is 20 percent.

Q. Based on what?

A. On my over-all picture.

Q. Well, never mind your over-all picture. Specifically, what do you base that 20 percent less on?

A. Specifically, no specific items.

Q. How many patients were there in there the day before the takings in these cases?

A. I haven't any idea.

Q. How many beds did they need to take care of the employees of the plantation before the takings in these cases? A. I haven't any idea.

Q. You did not try to find out?

A. I did not.

Q. And still you attempt to testify that it would be lower in value because it was an overcapacity?

(Testimony of C. C. Crozier.)

A. I do.

Q. The intrinsic value of that hospital didn't change one penny because of the takings in these cases? [1681]

A. It did not.

Q. Do you know how much the hospital cost?

A. I do not.

Q. Did you know when you arrived at your opinion?

A. I did not.

Q. How much would you say it was worth after the takings in these cases?

A. Specifically, I have no idea.

Q. In dollars and cents how much less?

A. In an over-all picture I should imagine 20 percent less.

Q. In dollars and cents, I asked you.

A. No, I have no idea in dollars and cents.

Q. You never tried to figure?

A. I did not.

Q. Now, autos and trucks you'd say would have about the same value before as after?

A. Yes, it would be my opinion that the trucking items of the plantation would have the same value before as after.

Q. Wouldn't lesser acreage have the same effect upon the autos that it has on these other items that you testified about in that they might have too many autos and vehicles?

A. Yes, but there X dollars value could be realized before and after, the same X dollars value.

Q. Don't you think fences could be the same thing?

(Testimony of C. C. Crozier.)

A. They might not, for the simple reason you cut the fence at the line of taking; then you have to put an additional fence in around it.

Q. Where did you have that situation?

A. Specifically, I can't recollect any specific—

Q. You're just talking generally again?

A. I'm talking generally, yes.

Q. Machine shop. What were the contents of that machine shop that you had in mind?

A. Well, the machine shop speaks for itself. That has lathes.

Q. There's all kinds of machine shops.

A. Motors. Well, a machine shops, that's part of a sugar plantation enterprise.

Q. All right. How many lathes did they have?

A. Specifically, I have no idea.

Q. You didn't try to find out?

A. I did not.

Q. Therefore, you couldn't value them, could you? A. That's correct.

Q. What else did they have in them besides lathes? A. Well, they had motors.

Q. How many motors? A. I have no idea.

Q. You couldn't value them without knowing, could you? A. That's correct.

Q. What else did they have?

A. They had benches, lockers, other items in the machine shop.

Q. Well, what other items? Let's not be general; let's be specific, that you had in mind?

(Testimony of C. C. Crozier.)

A. Well, offhand, Mr. Rathbun, I can't enumerate them.

Q. Could you enumerate them when you arrived at your opinion in this case? A. No.

Q. You don't know whether they have got 25 motors or 2? A. I do not.

Q. Do you know the size and square feet of that machine shop? A. Specifically, no.

Q. And you didn't when you arrived at your opinion in this case? A. That's correct.

Q. What would you say the value of the building was before the takings in this case?

A. I wouldn't—I couldn't state specifically.

Q. You couldn't state it because you don't know the dimensions, is that right?

A. That's correct, and many other factors that go to the [1684] value of a machine shop.

Q. Which you didn't know also?

A. That's correct.

Q. Now, have you covered the things that you were asked about on direct, namely, the mill, the irrigation system, the road system, the pumps, the electric system, domestic water system, the fences, the culverts, the hospital, the autos, trucks and other vehicles, the railroads, the live stock, and the machine shop; is that everything that's included within the property that you gave your opinion of value of in this case?

A. I don't remember those items specifically coming out on direct examination.

Q. I didn't say they came out on direct exami-

(Testimony of C. C. Crozier.)

nation, but three that I gave you came out on direct examination. Whether they came out on direct examination or not, is that all of the items that you had in mind which were included within the property valued by you in your opinion in this case?

A. No, there must have been other items.

Q. Well, what were they?

A. In the over-all picture.

Q. What were they?

A. Specifically, I couldn't enumerate them.

Q. Can you think of another item besides those that I specified? [1685]

A. I can't recollect specifically any item at this time.

Q. Then those items are the items that you had in mind, and all of them which you had in mind when you arrived at your opinion that you testified to in this case? A. In the over-all, yes.

Q. The only items that had any value in your opinion? A. What items?

Q. The ones that I specified.

A. No, there must have been other items.

Q. I didn't mention land. Including their fee simple land? A. That's correct.

Q. Now, that's everything, is it, everything that had any value, the day before the takings in these cases?

A. At this time I can't recollect any other major specific items.

Q. Well, you are the one that valued them. Now, it's up to you.

(Testimony of C. C. Crozier.)

A. That's correct. I did not value the specific items, Mr. Rathbun.

Q. You valued the over-all property, including those?

A. Those were all items that were in my over-all picture.

Q. Yes. All right. Please answer me if that's all of them that had any value, that you had in mind, of course?

A. Well, I had the over-all picture in mind.

Q. I know you have. But answer my question, please?

A. Well, in my over-all picture I didn't have an itemized list of all the specific items and the before and after value.

Q. Will you please answer my last question?

A. May I have it?

(The reporter read the question referred to.)

A. I believe so, Mr. Rathbun.

Q. All right. Any of those items that you have just given moveables?

A. Yes, a number of moveables.

Q. Which ones?

A. Well, some of the pumps, electric equipment.

Q. Which ones of the pumps? How many of them? A. I have no idea specifically.

Q. All right. What else?

A. The electric equipment, domestic water supply, hospital.

Q. Anything else?

A. Many other items that I have enumerated.

(Testimony of C. C. Crozier.)

Q. Well, what are they?

A. Some of the fences, some of the culverts, pole lines.

Q. Anything else?

A. I'm not sure whether they are items that I have enumerated or not. [1687]

Q. Is that all that you can enumerate?

A. Yes, at this time.

Q. How about automobiles, vehicles, live stock?

A. They should be included.

Q. Trucks? A. They should be included.

Q. Now, did you have those things in mind as being among the property of this company when you gave your valuation or your opinion in this case? A. I did.

Q. These moveables? A. I did.

Q. Can you give us a value on the moveables the day before the taking in these cases?

A. Specifically, no.

Q. Can you give the value of them afterwards?

A. Specifically, no.

Q. Now, will you please tell us how you arrived at this thousand dollars an acre in which you multiplied in effect the 1,087 acres taken in these cases?

A. Well, after my experience over many years in talking to various individuals, having been in this plantation valuation picture—

The Court: Speak louder, please.

A. —having been in this plantation value picture, having [1688] travelled in plantations, and by reason of my position since 1932 to date deeply

(Testimony of C. C. Crozier.)

involved in the value of plantations, having somewhat followed the liquidation of a number of plantations and the sale of a number of plantations, having gone into the matter of ratio of acres to capital required, or book value shown by the different plantations, my opinion that that figure is somewhere in the neighborhood of a thousand dollars an acre for the so-called leasehold plantation.

Q. Give the items specifically that you made up when you figured out this thousand dollars an acre?

A. Well, we'll start in with fee land. Most of the plantations that are on leasehold have some little fee.

Q. Never mind most of the plantations, please. Confine it to the Honolulu Plantation.

A. All right. Honolulu Plantation had 387 odd acres of fee land.

Q. You told me you didn't value it.

A. Specifically, I didn't value it.

Q. So that enters into your thousand dollars?

A. That's right, part of the thousand dollars.

Q. And you don't know what the value of the 387 acres was, do you? A. I do not.

Q. All right. What else?

A. There's the improvement thereon. [1689]

Q. What improvement?

A. Well, starting with the mill, camps, on the fee land; some of their pumps are on their fee land, some of the fee land that had nothing to do with the enterprise. Then go on to their leasehold,

(Testimony of C. C. Crozier.)

the corporation's investment in their respective leases.

Q. Yes. Anything else?

A. Well, specific items I can't recollect.

Q. All right, now, the improvement. What figure in value of improvement did you have in mind when you sat down and arrived at this thousand dollars an acre?

A. Specifically, none.

Q. The mill?

A. Specifically, none.

Q. You used the mill and its value?

A. That's right.

Q. In arriving at that thousand dollars?

A. That's correct.

Q. And what value did you have in mind for the mill in arriving at the thousand dollars?

A. Well, you are talking about the mill building now?

Q. Well, whatever that you are talking about, the mill building alone, not the machinery.

A. Well, you made your question—it was improvement, was it not? [1690]

Q. You said improvement.

A. You said it.

Q. I'm asking you now about what you said. You said improvement. I'm asking you about the mill. That's the way you said it. What did you mean, if you want to qualify it?

Mr. Vitousek: If the Court please, I think we ought to read the question back, that counsel did ask him about improvements.

The Court: The trouble is that each is asking

(Testimony of C. C. Crozier.)

the other as to whether they mean the same thing by the word "improvement."

Mr. Rathbun: I'm trying to straighten it out.

Mr. Vitousek: If the Court please, I object to the question. It's been gone into for hour after hour that he didn't value specific items. He gave first his over-all value; now he's getting his thousand. Are we going through all that again? We'll go down to the half acre and go through that.

Mr. Rathbun: There hasn't been one syllable of question asked in this case pertaining to the thousand dollars valuation that I have heard. If I did it, I did it unconsciously.

The Court: This is in connection with a different matter. The questions are in order. Instead of going back, I would assume, Mr. Witness, that the questioner meant the mill by improvement, but you meant and told him that you considered the improvement on the fees. Now, with that in mind, can you [1691] answer the question?

A. Well, starting out with the mill building, you'd have a building larger after the takings than economically would warrant you'd have before the taking.

Q. Stop there. What were the dimensions of that mill when you made that?

A. Specifically, I do not know.

Q. And how much less would the dimensions be that you had in mind when you made that answer?

A. I do not know.

Q. In fee? A. I do not know.

(Testimony of C. C. Crozier.)

Q. How can you figure it without knowing that?

A. Except as a general assumption.

Q. Just a general assumption?

A. That's correct.

Q. That's what your whole opinion and testimony is based on, general assumption?

A. That's correct.

Q. Camps, is that one of them you said?

A. No, I didn't say that. The camps are on the leasehold. Yes.

Q. Didn't you say that? A. I did.

Q. How much did you value, what consideration of value [1692] did you have in mind when you arrived at a thousand dollars per acre on camps?

A. Specifically, no amount.

Q. How much on the fee land? I think you answered that you didn't value those.

A. Specifically, no.

Q. How much on the pumps?

A. Specifically, no amount.

Q. How much on these miscellaneous lands?

A. Specifically, no amount.

Q. How much on the leasehold?

A. Specifically, no amount.

Q. How much on the corporate investment in the leases? A. Specifically, no amount.

Q. You haven't any idea whether they had a corporate investment of one dollar or a million dollars in corporate leases?

A. I know they had an investment; the exact amount I do not know.

(Testimony of C. C. Crozier.)

Q. You don't know whether it's a dollar or a million dollars?

A. I know it was more than a dollar.

Q. How much more?

A. I haven't any idea.

Q. How do you know it's more than a dollar, then? [1693]

A. Because I actually saw it myself.

Q. Well, where did you see it?

A. Well, they had—we drove down the road of one of these areas' right of way. The corporation had an investment in the record.

Q. That's one thing you knew about? What else did you know about? A. Specifically?

Q. On the corporate investments?

A. Specifically, I couldn't recollect.

Q. Not another dollar that you can account for when you made up your mind of a thousand dollars an acre, specifically I'm talking about? Production specifically.

A. Overcapacity of the mill, overcapacity of the hospital.

Q. What was the capacity of the mill?

A. Prior to the taking?

Q. Yes.

A. I should imagine around 25,000 tons.

Q. You imagine it from what?

A. Well, from information that I had, I presume.

Q. Well, what information?

A. Well, I did know at one time, it was a 30 or 35 thousand ton mill.

(Testimony of C. C. Crozier.)

Q. Well, what did you know when you made up your mind [1694] to this opinion, when you testified to a thousand dollars an acre in this case?

A. Well, I understand on June 21, 1944, on the 4,400 acres basis, that the mill capacity was around 25,000 tons.

Q. You mean by that, that that's all that that mill could turn out?

A. Oh, no. I guess the mill could be over-capacitated.

Q. Well, what do you mean by capacity?

A. Well, they could run the mill from January 1st to December 31st of the year and run on a 24-hour shift and not make replacement.

Q. Well, was it geared that way so that they could do it that way?

A. They didn't gear it that way. The mill could be physically used that way.

Q. Well, as it was on June 21, 1944?

A. No.

Q. What was the ultimate capacity that could be gotten out of the mill?

A. Specifically, I do not know.

Q. And you didn't try to find out?

A. No.

Q. How do you know it was less after these takings than before?

A. Well, I know by deduction that they'd have less cane [1695] acreage.

Q. What deduction, that you lost a—

A. Well, you've lost a thousand acres of cane,

(Testimony of C. C. Crozier.)

and you have a thousand acres of cane less to put through the mill.

Q. They might buy raw sugar to put through the mill? A. They might.

Q. And they did do that through the years?

A. I understand they did.

Q. You know it, don't you? A. I do.

Q. That affects capacity? They have to have capacity for that, don't they? A. They do.

Q. And that didn't change by these takings, did it? A. Not materially.

Q. Well, in any way?

A. No, it might have gone up or it might have gone up or down one year to the next. It varied. I don't know.

Q. Are you familiar with the leases involved in the cases that are on trial here? A. I am.

Q. Now, you had those in mind when you arrived at your opinion in this case, did you not?

A. I assume that in the before and after that they would continue to enjoy the use of those areas under lease. [1696]

Q. Yes. You had in mind Exhibit 9-B in this case, then, which is a lease from McCandless to the Honolulu Plantation, dated October 20, 1909. did you?

A. Well, I knew that certain McCandless lands were leased to the Honolulu Plantation. The number of the exhibit and the like, I have no idea.

Q. Did you have any specific amount of acres in mind in connection with that lease when—

(Testimony of C. C. Crozier.)

A. Yes.

Q. —when you arrived at your opinion?

A. Yes.

Q. What was it?

A. The Honolulu Plantation has under lease from L. L. McCandless Estate 165.83 acres.

Q. What was the term? What are you reading from?

A. I'm reading from the real property assessment schedule of Honolulu Plantation for the year 1944.

Q. Where did you get the schedule from?

A. From the records of the tax office.

Q. And who furnished them to the tax office?

A. The classifications are made up by the Honolulu Plantation.

Q. The acreage made up by them, isn't it?

A. The classification of the acreage.

Q. The acreage has to appear, then, doesn't it?

A. That's correct.

Q. And you are reading from that something filed by the Honolulu Plantation Company to the tax assessor?

A. And by the McCandless Estate that they had under lease to the Honolulu Plantation.

Q. How long did that lease have to run?

A. As I sit here, I don't know the specific terms.

Q. What was it, what date did you have in mind as to the expiration when you arrived at your opinion in this case?

A. Well, as I understand the L. L. McCandless lease to the Honolulu Plantation is dated October

(Testimony of C. C. Crozier.)

20, 1930—1920—for a term of 30 years from January 1, 1910, with a letter, I believe, of mutual understanding relative to the occupancy on and after the termination.

Q. Now, that is the lease that you had in mind when you made up your opinion in this case?

A. That is one of the areas that would be part of the enterprise in making this deduction that they would enjoy the continued use.

Q. Is that all the McCandless property that you had in mind when you made up your opinion in this case as having been taken away from this company?

A. Well, the McCandless Estate has other lands in the district.

Q. Taken away from them, I said, in these cases. That's [1698] what you are testifying on, isn't it?

A. Well, I believe there was a very small area in one of these cases.

Q. Well, what do you know about it? What did you have in mind when you arrived at your opinion? A. Specifically, nothing.

Q. You don't know the acreage that was taken away from the Honolulu Plantation in the cases on trial here that had been leased to them by the McCandless Estate, is that right?

A. I didn't know.

Q. Did you know when you made up your mind on this opinion?

A. Well, I did know the actual area—

Q. What did you have in mind, then, when you

(Testimony of C. C. Crozier.)

arrived at your opinion in acreage and the terms of the lease? A. Specifically, no detail.

Q. You didn't know, in other words?

A. I, why I do know the area that was taken from the McCandless Estate in one of these suits.

Q. Well, then, tell me what you had in mind when you arrived at your opinion, both the thousand dollars an acre and the million dollars?

A. In the over-all picture; specifically, none.

Q. You can't tell me, is that it?

A. That's correct. [1699]

Q. Do you know of any lease from the McCandless Estate to the Honolulu Plantation Company that expired on August 31, 1944?

A. Specifically, no.

Q. And do you know of an extension of such a lease for five years after that date?

A. Specifically, no.

Q. You didn't know anything about that when you gave your opinion in this case, is that right?

A. Except that I do know in my assumption in the over-all picture that the areas leased from the McCandless Estate as part of the enterprise would still be enjoyed by the enterprise.

Q. Well, now, when you are all through with that, will you answer my question?

A. Specifically, no.

Q. All right. How many acres of land did you have in mind when you arrived at this opinion on the Damon lease, which is in evidence here as Exhibit 9-K?

(Testimony of C. C. Crozier.)

A. In January, 1944, the area leased to Honolulu Plantation by the Damon Estate is 224.431 acres.

Q. How many acres did you have in mind when you arrived at your opinion of value in this case as having been taken away from the Honolulu Plantation Company under that Damon lease?

A. Specifically, I do not know.

Q. You don't know how many acres were taken away?

A. I did know, Mr. Rathbun.

Q. Well, tell me what you had in mind, then?

A. Specifically, I haven't the exact—

Q. When you arrived at your opinion?

A. Specifically, no specific acreage.

Q. And still you are multiplying a thousand dollars an acre by 187 acres, by 1087 acres, the amount that was taken away in this case, to arrive at your opinion of value, is that right?

A. That's part of the picture, yes.

Q. Well, that's the way you did it, is it?

A. Well, in the final summation, that's the deduction, yes.

Q. That's what you testified to, wasn't it?

A. That's correct.

Q. What terms did you assume under that Damon lease, Exhibit 9-K in this case?

A. What term?

Q. Yes.

A. I assumed that it would still continue to enjoy that area under lease.

Q. For how long?

(Testimony of C. C. Crozier.)

A. I have no definite period that they would carry on. [1701] I presume that in my before and after and the enterprise over-all, it would enjoy at least 25 years.

Q. From what date? A. June 21, 1944.

Q. Now, you assume that they would have a 25-year enjoyment of that from June 21, 1944, on the basis of what?

A. As a growing concern in making my deductions on the before and after value.

Q. Did you assume that they had a lease for 25 years from that date?

A. I assumed that they'd enjoy the occupancy of that area as part of their over-all picture.

Q. Did you ever hear of the Damon Estate giving the Honolulu Plantation the right to use any land that they didn't have a lease on in writing?

A. No, there's been considerable conversation relative to the propriety or the lease tenure of between the owners and the plantations.

Q. Now, when you are through with that, will you please answer my question?

A. Specifically, no. I have never seen the document myself.

Q. Why don't you answer those questions that way in the first place? It's a simple answer, yes or no.

A. Why don't you ask me the specific questions? [1702]

Q. Why don't you answer yes or no to it? You did finally.

(Testimony of C. C. Crozier.)

The Court: Proceed.

Mr. Rathbun: This goes to his credibility, your Honor. I have a right to ask him this, I think.

Mr. Vitousek: If the Court please, he has no right to ask such a question, is he credible or not? He is asking questions which, I submit, no one knows what they mean. The witness, from what they have gone on before, assumes what they mean, and he has made his answers.

The Court: Proceed.

By Mr. Rathbun:

Q. Now, will you answer that question, or did you answer it No. I think you did. May I have his answer?

(The reporter read the last answer.)

Q. At the time you made up your mind in this case to the opinion of value that you have testified to, did you know that that lease expired at the end of 1943 by its terms, meaning the lease Exhibit 9-K, dated June 27, 1927?

A. I did know that the actual lease that I saw expired in '43.

Q. Then why did you assume that there would be 25 years of enjoyment on that property thereafter?

A. In my assumption of the before and after, on the over-all picture of the 4,400 acres and the 3,300 acres, that that [1703] take would be an actuality.

Q. What would be an actuality?

A. That they would enjoy the 4,400 acres for at least 25 years.

(Testimony of C. C. Crozier.)

Q. Well, let's get out of the 4,400; let's talk about what I asked you, the Damon lease, Exhibit 9-K.

A. Well, as I understand, June 21, 1944, that they were occupying that area.

Q. Do you know under whose authority they were occupying it? A. I have no idea.

Q. Do you know whether it was the Navy authority after they let them take possession of the land? A. I do not.

Q. You didn't try to find out?

A. I did not.

Q. But you still assumed that the Honolulu Plantation would continue to enjoy the occupancy without knowing those things?

A. On my premise, yes.

Q. When you made up your mind as to the opinion of value in this case that you have testified to, did you know when the U. S. Government went into possession of that property by right of entry or otherwise? A. I do not. [1704]

Q. And you didn't know at the time?

A. Specifically, no.

The Court: It's about time for our next recess.

(A short recess was taken at 12 noon.)

After Recess

By Mr. Rathbun:

Q. Mr. Crozier, in arriving at this opinion of value that you have testified to, did you take into consideration at all the earning record of this com-

(Testimony of C. C. Crozier.)

pany? A. Specifically, no.

Q. Well, generally, then? A. Yes.

Q. In what respects?

A. Well, I realized that the Honolulu Plantation had been a corporation of around five thousand acres of cane, five million dollars capital; in addition to making brown sugar it made white sugar, which changes a little bit of the complexion of comparing sugar company to sugar company. It was, as I observed it, it was efficiently run. It paid its bills, and obligations, and made money. And from time to time, as conditions warranted, distributed to its stockholders a dividend.

Q. Now, you considered that, did you?

A. I knew it and it was in the general picture of my thinking, yes. [1705]

Q. And what effect did it have upon your opinion in this case of value?

A. In the over-all picture, you are reducing that enterprise from one picture to another picture.

Q. Just what do you mean from one picture to another picture? Be specific.

A. In other words, you are picturing the Honolulu Plantation before the taking as an enterprise and going concern; there are certain factors that go to constitute it as a corporation, and in the over-all picture you have the after picture of the same corporation with less acreage, therefore less tonnage.

Q. Are you through? A. Yes.

Q. Therefore lesser earnings?

(Testimony of C. C. Crozier.)

A. Therefore less earnings.

Q. And that's part of what you made your valuation on?

A. That's correct; that's a factor.

Q. In other words, you based your valuation—you have already stated that the physical intrinsic value of none of these properties was changed any by the takings involved here, haven't you?

A. That's correct.

Q. What you mean to say in testifying to this opinion is that, for instance, if this company had three million dollars [1706] necessary to operate this company on the acreage that they had before these takings, and 1087 acres of land were taken away, that they could earn **less money on that capital** that was necessary to operate that company than they could before the takings?

A. Well, of course we all expect capital to earn something.

Q. Well, answer yes or no to that, if you can?

A. I can't.

Q. Why not?

A. It's too involved. There's too many—

Q. What's involved about it?

A. There's too many complicating factors.

Q. Well, what are they?

A. Well, your equation of what you term earnings to capital and all the others.

Q. I didn't say any others.

A. Maybe I can explain it this way. If on June 21, 1944, I was about to buy the corporation, and

(Testimony of C. C. Crozier.)

as I reviewed it and had other assistance in going over the various items as to its efficiency and the like, and with the idea of having 4,400 acres with continued use to operate the corporation, I would have X value.

Q. What is X value?

A. Well, we'll call it four million dollars. [1707]

Q. Let's call it something that we can pin our hat on, will you?

A. I did invest that money and proceeded, and two days later I found that I had not 4,400 acres of cane to carry on my over-all enterprise, but 3,300 acres of cane. I then would have a diminishing in my purchase or diminishing my enterprise of a million dollars. In other words, by my before and after value on an over-all picture.

Q. And your over-all picture, regardless? After the taking you had less earnings on the money that was invested to operate the company, isn't that what you mean?

A. You naturally would have less.

Q. Is that what you mean?

A. Not specifically.

Q. Well, generally, then?

A. Yes, generally.

Q. And it affected your opinion, and you based your opinion partly on that, didn't you?

A. Partly, yes.

Q. The taking of this 1087 acres involved in the cases on trial here didn't change or affect the capital invested to operate that company one dollar.

(Testimony of C. C. Crozier.)

did it? A. It must have.

Q. How did it? Did it take any of it away physically? A. No, physically, no. [1708]

Q. It was right there after they took the property, the same as it was before? Invested in the company? A. That's correct.

Q. If before the takings in this case that company was earning six percent on four million dollars of necessary invested capital, the figure that you used, how much less could they have earned after they took 1087 acres away?

A. Specifically, I have no idea.

Q. Did you have any figure in mind on that?

A. I did not.

Q. When you gave your opinion in this case?

A. I did not.

Q. Don't you think you'd have to base it as you do partly upon earnings?

A. To the ultimate degree I should imagine, yes.

Q. What do you mean by ultimate degree?

A. Well, getting down and taking every item and every factor.

Q. Well, just use your word "over-all", six percent on four million dollars.

A. Well, we all know that the percentage of earnings is decreasing as we get into these economic problems of labor and Government control and what not.

Q. That has nothing to do with these takings, has it?

(Testimony of C. C. Crozier.)

A. I'm talking about the value of your money.

Q. I didn't ask you about value of money.

A. Why, I understood you set up four million odd dollars at six percent.

Q. Because you used four million. Now, again, listen to my question, please. I think it's a fair question. I'm trying to get what you base your opinion on in this case, if it's possible to do it. Assume that you had the necessary working capital. Call it capital investment of four million dollars before this property was taken involved in these cases. Supposing that before the takings it was earning six percent on that, how much less would it earn because of the taking of 1087 acres involved in these cases in your opinion?

A. Well, in my over-all, 20 percent would be less, it would be 20 percent less in dollars.

Q. Well, what would you estimate? What would you say?

A. Well, on that deduction by arithmetic you'd have six percent of four million, which would be \$240,000, less 20 percent.

Q. You just take an arbitrary 20 percent? That would be that they could earn 20 percent less on that invested capital? A. Yes.

Q. That's what you mean to say?

A. By taking deduction, yes.

Q. And you base your opinion on that in this case, don't you? [1710]

A. Partly and indirectly.

Q. Well, partly. You do, don't you?

A. That's correct.

Q. That's one of the items?

A. That's correct.

Q. Making up your opinion?

A. That's correct.

Q. That you have taken into consideration?

A. That's correct.

Q. Therefore, in arriving at your opinion in this case, taking into consideration earnings, you had in mind the net profit for the year of that company, didn't you, in different years?

A. I did not specifically.

Q. Well, did you generally? A. Yes.

Q. What was the net profit of that company for the year ending December 31, 1942, that you had in mind in arriving at your opinion in this case?

Mr. Vitousek: Now, if the Court please, we submit that is an unfair question. The witness, if he has to answer that, is entitled to look at these exhibits the same as counsel is.

Mr. Rathbun: He's telling the witness what I ask for.

Mr. Vitousek: You have no right to do that. He said he didn't take it specifically in consideration, that he took it [1711] into consideration generally, that it was profitable. This was gone into yesterday, if the Court please, if you will look at the notes as I looked in mine. He talked about dividends and he talked about profit yesterday. Now, this is putting it in a different way but it's still the same subject that he was cross-examined on yesterday. He asked about, did he consider

(Testimony of C. C. Crozier.)

they paid dividends, and the answer was yes. Now, if he's going to talk about a specific item, and the witness wants to answer specifically, he does have a right to call for the memo he used when he made up his opinion.

Mr. Rathbun: If this witness was an intelligent witness, if he wants to look at any document before he answers the question, he can ask for it. He doesn't have to have counsel suggest it to him. That's an old, moth-eaten trick.

Mr. Vituosek: I don't like these things about—

Mr. Rathbun: Well, I don't have to withdraw.

Mr. Vitousek: Well, I'm talking to the Court and not to counsel.

The Court: Your objection is overruled and the witness may answer if he can. And he has indicated that he'd like to look at documents, and I'm sure that if need be he can call for a document.

Q. Do you remember the question?

A. May I have it?

(The reporter read the last question.) [1712]

A. Specifically, no amount.

Q. The amount made no difference to you?

A. Specific amount, no.

Q. But still you took earnings into consideration in arriving at your opinion?

A. That's correct.

Q. What earnings did you take into consideration? What year and what amount?

A. Well, it's my recollection that, as I stated, that it was a growing concern, and proper manage-

(Testimony of C. C. Crozier.)

ment and all the other factors, that from time to time, after paying all their bills, they distributed the dividend, and that dividend record, as I recollect, ran around \$150,000 a year.

Q. What year did it run \$150,000 a year?

A. Specifically, I don't know.

Q. We are talking about dividends now?

A. That's correct.

Q. I didn't ask you about that, did I? I asked you about earnings. That's much different than dividend, isn't it?

Mr. Vitousek: If the Court please, I object to counsel arguing with the witness.

Mr. Rathbun: I didn't argue. That's a question.

Mr. Vitousek: Well, I don't think it's a question.

Mr. Rathbun: Well, I do.

The Court: One at a time. There are several questions. [1713]

Mr. Rathbun: But they are all directed at the same thing.

Mr. Vitousek: May I make my statement?

The Court: Yes.

Mr. Vitousek: There are several questions, fast, one right after the other, and the witness has answered the question as put to him. Now he is coming back and saying he didn't ask about dividends. But the question didn't call for the answer. It called for an explanation, and that's what he's giving.

The Court: Well, he's entitled to ask him if he

(Testimony of C. C. Crozier.)

means the same thing by both terms. The question called for net profit and the answer involved the term dividends.

Mr. Rathbun: And I want to eliminate that because I didn't ask him that. I want him to answer my question as I asked him.

The Court: You may ask the question.

Q. Now, my last question was, is there a difference, there is a difference between dividends and earnings, isn't there? A. There is.

Q. You have heard of corporations paying dividends without the net earning to pay them with, haven't you? A. That's correct.

Q. Now, again, did you know the earnings when you took earnings into consideration in forming your opinion of value in this case that you have testified to for the year 1941? [1714]

A. Specifically, no.

Q. Don't you think that it would have been necessary for you to know that before you give it consideration in valuing this property, base it on earnings? A. I knew there were earnings.

Q. You knew what?

A. I knew that the company had earnings.

Q. Well, wouldn't the amount of the earnings make a difference in your valuation if you considered earnings in your opinion?

A. Well, if the earnings had been next to nothing for many years, or they had been exorbitant, they would. But I assume that in—it was my recol-

(Testimony of C. C. Crozier.)

lection that the earnings were commensurate with the enterprise's activity.

Q. Well, what do you mean by commensurate? On what amount and what percentage?

A. If you will let me see a corporation—

Q. You don't need anything to answer that.

Mr. Vitousek: We object to saying that he has to answer and what amount and what percentage on recollection. That was the specific question, the specific amount, and he's entitled to ask for what he did ask for.

The Court: Well, now, you are picking up some of these additional questions. You confuse me. The last real question to the witness was what did he mean by commensurate. [1715]

Mr. Vitousek: May I ask that the record be read back?

(The reporter read the last question)

The Court: There are three questions there. The last one at the time was on "commensurate".

Mr. Vitousek: As I understand the last one, it was on what amount and what percentage. He asked "commensurate" and before the question was answered, he added to it "in what amount and in what percentage?"

Mr. Rathbun: I added that after he answered the other question.

The Court: No. I would like to know, Mr. Rathbun, what is being objected to.

Mr. Rathbun: I'd like to know, too. I'm very much interested.

(Testimony of C. C. Crozier.)

The Court: Well, you keep quiet for a moment and perhaps we can find out.

Mr. Rathbun: All right, I'll sit down.

Mr. Vitousek: In reply to that question the witness asked—

The Court: Which question?

Mr. Vitousek: I mean before he answered the last question which was read. He asked, may I see the corporate exhibit and counsel says No. Now, I'm objecting to the refusal of allowing the witness to see an exhibit when he is asked to answer in what amount and what percentage. I'm not objecting [1716] to the question. I'm objecting to counsel stating he can't see it.

The Court: The witness, as I recall, started to say that he wanted to see a corporate exhibit to use in illustrating his answer. That is the inference he left in my mind, and the witness may see a corporate exhibit if he needs it in relation to his answer.

Mr. Rathbun: May I have the question?

(The reporter read the last question)

The Court: Do you have the question in mind?

The Witness: Yes.

The Court: Do you want to see a corporate exhibit?

The Witness: Yes. I made a statement, as I understand it, that the corporation was a growing concern and had earnings. Now I am to tell Mr. Rathbun the specific figures or the amount of earnings.

(Testimony of C. C. Crozier.)

Q. All right, without looking at some exhibit, you can't tell me? A. I cannot.

Q. And you can't tell me what you had in mind when you made this valuation that you have sworn to here?

A. Except that I do know that it had a dividend record and the dividend as a rule comes out of earnings. And the different times, in studying the Honolulu Plantation, it did have earnings.

Q. All right, now, what exhibit do you want to see? A. Go back to 1939.

Q. Give them all to him, Mr. Clerk.

A. Beginning with the corporation statement, the year ending 1938—

Q. Why do you ask for the one in '38, Mr. Crozier?

A. Well, that's prior to your war period.

Q. How about '39?

A. Well, in '39 we had the first taking of the Makalapa crater and it likely affected the enterprise.

Q. But you are not considering it in this case, are you, the Makalapa crater?

A. No, I'm taking it up to June 21, 1944, and the answer that I have given is as far as my opinion of the value of the diminishing the enterprise.

Q. All right, go ahead now.

A. In the year 1938, Fortieth Annual Report of the Honolulu Plantation Company, ending December 31, 1938, the annual statement shows that

(Testimony of C. C. Crozier.)

in the P and L statement that they carried a loss of \$333,629. And in their 1939, their 41st annual report, that the loss in their P and L statement was \$197,000 odd dollars.

Q. What were the earnings that year, net, before dividends, available for dividends?

A. From that year's activity?

Q. Yes. [1718]

A. On their P and L statement, no earnings.

Q. Was there a dividend paid?

A. There was.

Q. How much?

A. Of \$150,000, I believe.

Q. All right, go ahead. Thirty-nine is next now.

A. I gave '39. 1940—

Q. I thought you said '38 was a loss?

The Court: He did. He has covered two years.

Q. Let's stop there before you go any further. Both of these years you said showed a loss?

A. Yes, under their P and L statement.

Q. Now, did you have these P and L statements, these annual reports from which those P and L statements are taken, marked Exhibit 13-O and 13-P, before you when you arrived at your opinion of value in this case? A. I did not.

Q. The first time you have seen them is today, is it? A. No.

Q. When did you see them before?

A. I have seen them since about 1932.

Q. Did you carry all those figures in your mind up to the time you made up your mind to the

(Testimony of C. C. Crozier.)

opinion that you have testified to in this case, until 1946? A. I certainly did not. [1719]

Q. Then you didn't know what the earnings were when you took earnings into consideration when you made up your mind to the opinion you have testified to? A. Specifically, no.

Mr. Vitousek: Now, if the Court please, the witness asked for certain exhibits, when he was asked a question, and he is entitled to go through all of them without being shut off.

Mr. Rathbun: I have a right to ask questions on the ones he has identified so far. And he can take the rest of them and go through them when I get through.

The Court: Actually he asked for the year '38. He has that. He has them all by reason of Mr. Rathbun suggesting to the Clerk that he give all of them to him. Proceed.

Q. How much of a dividend did they pay in the year 1939, do you know?

A. Would you let me see the corporate exhibit?

Q. Do you know without looking at it?

A. I believe I just said \$150,000.

Q. Well, is that what you had in mind when you gave your opinion in this case?

A. Specifically, no.

Mr. Vitousek: Now, if the Court please, he asked to see the corporate exhibit. I think he is entitled to see it.

The Court: He may. He first asked him whether

(Testimony of C. C. Crozier.)

he could [1720] tell the figure without looking at it.

Mr. Rathbun: Which I have a right to ask, I take it.

The Court: That's right. Proceed.

Mr. Rathbun: Now, what was the answer, please?

(The reporter read the last answer)

Q. If there was a difference in the earnings or the losses in 1938 and '39, you having considered earnings in arriving at your opinion of value, it would make a difference in your opinion of value, wouldn't it, by the difference between the earnings?

A. Yes, if they were gone into specifically and analyzed and all the reasons why. The P and L statement shows a loss at the end of the year for various reasons; charges are taken prior to closing of the books, where in reality they might not be set up, which would show a profit, when taken show a loss.

Q. In the statement of 1938, marked Exhibit 13-O in this case, the loss is shown to be what for that year?

A. According to this P and L statement, on page 16 in 1938 the loss is \$333,629.93, transferred to surplus.

Q. If you didn't have anything before you but that statement you wouldn't give very much value to this company if you based it solely on earnings, would you?

A. On the bottom line figure, no.

(Testimony of C. C. Crozier.)

Q. That's true of 1939 also, isn't it? [1721]

A. Except the 1939—they paid a dividend.

Q. Well, I'm talking about earnings now.

A. They had a loss.

Q. The fact they paid a dividend wouldn't help you any in your mind when they didn't have any earnings to pay it with?

A. You're getting into questions of accounting

Q. Never mind what I'm getting into. I'm asking you.

A. Take the dividend record over a number of years.

Q. What has the dividend record got to do with earnings?

A. Well, you've got to make earnings before you can fundamentally or economically pay a dividend.

Q. You mean you should?

A. You should.

Q. Well, they didn't, did they?

A. Evidently not in those years on those statements.

Q. All right. Now, in this 1939 shows a loss of \$197,559.11, you say? Is that the way you interpreted it? A. That's correct.

Q. The loss in 1938 was \$333,629. If you use earnings in arriving at your opinion of value in this case, there's a difference of some, in excess of a hundred thousand dollars in those two years in their losses, isn't there?

A. That's correct.

(Testimony of C. C. Crozier.)

Q. How much difference would you say that would make in the value that you testified to if you based your opinion on [1722] earnings only?

A. Well, that, if you based your opinion strictly on earnings only, you'd have to go into those—

Q. Please answer on my assumption, please.

A. You'd have to—

The Court: Just a minute. May I have that question?

(The reporter read the last question)

Mr. Vitousek: Now, if the Court please, basing it on earnings only. The witness started to explain; there was a proper explanation. He's making no assumption for these two years.

The Court: I'm not sure what the witness did start to say. May I have that?

(The reporter read the last answer)

A. My value of a million dollars is based on earnings only, and these two P and L statements here showing these losses as affecting my million dollars, you'd have to go into the reasons why these earnings come out in these loss figures.

Q. Well, in arriving at your opinion in this case, if you based it on earnings, it would make a difference if they had different earnings each year, wouldn't it?

A. That would be so, Mr. Rathbun, but anybody assuming that these earnings, these losses are three hundred thousand, one hundred ninety-seven thousand, they might not be reoccurring losses, that that P and L statement could be possibly read-

(Testimony of C. C. Crozier.)

justed to show a different figure completely. [1723]

Q. You wouldn't accept the company's figure on those losses, then?

A. Not item for item, no.

Q. Well, what item don't you accept there in the figure of the loss that they show on those documents?

A. Well, I'd have to make a study of these P and L statements.

Q. Well, you'd better do it.

A. Well, you'd have to start out first with your price of sugar in the future, or except insofar as the following year is concerned.

Q. What does that have to do with it?

A. Well, you are building up a P and L statement, the type of depreciation taken, the method of amortization.

Q. Well, how would you change it?

A. Specifically, I don't know. You'd have to go in and study each one.

Q. Well, I'm asking you.

A. You'd have to go back to the books and the procedures.

Q. Well, you don't accept their books and their conclusions from their books, is that right?

A. Now, Mr. Rathbun, you are having me recite here figures that were taken on these P and L statements.

Q. Surely.

A. Which on the before and after basis would have to be [1724] subject to survey by any indi-

(Testimony of C. C. Crozier.)

vidual who is making these premises strictly on an earning basis.

Q. Well, did you make such a survey when you gave your opinion in this case?

A. No, I told you that my basis is based as a growing concern enterprise that had an economic earning.

Q. You considered earnings but you didn't consider what they were, is that what you are trying to say?

A. Actually, no; according to those statements, no.

Q. If you excluded from this Exhibit 13-P in this case the item of two hundred—which is the annual report for 1939—the conditional payments under the sugar act from the U. S. Department of Agriculture, \$210,182.75, what would the losses have been for that year?

A. It would be that figure plus the one hundred ninety-seven thousand.

Q. It would be \$210,182.75 plus \$197,559.11, is that right? Is that the way you would interpret it?

A. That's correct.

Q. If you had valued this property before and after, and the taking away of the acres that have been taken in this case were the same, at the end of the year 1939, basing it upon earnings what rate per acre would you value, would you use to determine how much was taken away in value from the company by the taking of 1087 acres? [1725]

A. I have no idea.

(Testimony of C. C. Crozier.)

Q. Can you figure it and tell me?

A. No, I cannot.

Q. Why can't you?

A. It would mean another study on the date that you now are setting up as the date of before and after to be computed in the deduction made.

Q. Well, I want to know what effect earnings have. It doesn't matter what year you take, does it?

A. Well, if you go back to 1939 you find that the earnings, the picture is a little better record than the earnings of '38—'39—because in the year 1937 the amount of transferred to net profit of earnings was plus \$407,000.

Q. And how does that affect it if you were valuing it at that time, favorably or unfavorably?

A. Well, I think it supports my contention that in the over-all picture the corporation is a growing concern and has earnings.

Q. But if they earned four hundred thousand dollars in one year and lost one hundred ninety-seven thousand the next, how much less would you value it at in the next year where they lost one hundred ninety-seven thousand over the one where they made four hundred thousand, having in mind 1087 acres as having been taken away from them?

A. That all depends, Mr Rathbun, on the study of the items affecting it. [1726]

Q. You'd have to study that to arrive at that?

A. Strictly on earnings, yes.

Q. And you didn't do that in this case in con-

(Testimony of C. C. Crozier.)

nection with arriving at your opinion you have given here? A. Specifically, no.

Q. Do you think it is proper from the standpoint of the things that you would consider in attempting to arrive at value before and after in this case for this company to use a loss of \$197,559.11, looking at the items that make up this profit and loss statement?

A. On the face of the one year, no.

Q. Why not?

A. Because that item is not a repeating item in your revenues and subsequent years that you are going to put money out and have the earnings on.

Q. How about the conditional payment for that year?

A. Well, conditional payment is another question and recurring item, your compliance payment.

Q. That's sent to the stockholders, is it not, and filed with the public records? Isn't this filed with the public records?

A. Not to my knowledge.

Q. Isn't it required under the laws of the Territory of Hawaii to file an annual report?

A. Yes, a corporation exhibit, not this. [1727]

Q. Similar to that?

A. Similar to that.

Q. This is for the stockholders, as you understand it?

A. This is only for the interpretation of the company's books.

(Testimony of C. C. Crozier.)

Q. It's their own interpretation, isn't it?

A. That's correct.

Q. Are you complaining about that?

A. Not at all, for the purpose that it serves.

Q. They were leading their stockholders to believe that by that report, which is Exhibit 13-P, that they only lost \$197,559.11 in that year, isn't that it, as you read it? A. Yes.

Q. If you add to that the \$210,182.75, they lost that much more, didn't they?

A. That's correct.

Q. And if anybody just looked at that bottom line figure, a stockholder or a prospective buyer of stock, he'd think that that was their net loss that year, wouldn't he?

A. If he went that far, yes; if he made that deduction.

Q. And that would be that item of Agricultural payment? A. That's correct.

Q. Now, I'm showing you Exhibit 13-S and 13-T in this case, the annual reports for 1942 and '43. In the year '42, how do you interpret that as the net profit for that year available for dividends?

A. Now you are getting mixed up on the dividend theory. Are you talking about earnings?

Q. Can you answer the question?

A. You're getting it involved. We have been talking about—

Q. I wouldn't point to anything.

A. In the year 1942, on this annual report under the P and L statement, they transferred as

(Testimony of C. C. Crozier.)

net profit, transferred to surplus \$233,688.37. On the face of that bottom line figure it looks as though they could pay a dividend.

Q. On that amount?

A. Yes, just on that figure. Now, before you pay a dividend, you'd better find out how it's made up.

Q. That's true, but we didn't ask you about that. They made it up, didn't they?

A. But you asked me if they paid a dividend.

Q. I didn't ask you if they paid a dividend at all. I asked you if that was available for dividends. Now, on Exhibit 13-T what would you say the amount shown there, as you interpret it, available for dividends?

A. Their annual report for 1943 shows on their P and L statement transferred to surplus \$190,302.79.

Q. Now, you said you took into consideration earnings in arriving at your value of opinion, opinion of value in this case. Is that the item, those two items that I have just [1729] called to your attention, the last one being \$233,668.37, illustrative of the earnings question that you had in mind when you made your valuation?

A. Specifically, no.

Q. Well, is it typical? A. It is part.

Q. Is it the kind of an item that you are talking about? A. Yes.

Q. If you were valuing this property, then, in the year '42, at the end of '42 and at the end of

(Testimony of C. C. Crozier.)

'43 there would be a difference if you used earnings as the basis in what you'd value it at, wouldn't there, on the face of that? A. There would.

Q. You'd value it less, on lesser earnings?

A. Strictly on those two figures as appearing thereon, yes.

Q. So that that is a variable item, isn't it? That earning proposition. A. It is.

Q. In order to use earnings as a basis for your valuation, you would have to know what the earnings were in the years that you were applying them to, wouldn't you? A. That's correct.

Q. And you didn't know that when you made up your opinion in this case, you said?

A. Specifically, no. [1730]

Q. Now, getting back to the question that started all this Assuming a company had a four million dollar working capital—we'll call it capital investment, as you put it, necessary for operation—and in the year 1942—before I get to that, assume that in the year 1941 they had paid six per cent on the investment. In the year '42 they had this loss that you have testified to as shown by these documents, and in '43 they had the loss that is testified to. How much difference would have been made in the amount that they could have paid to their stockholders?

Mr. Vitousek: May I have that question read?

(The reporter read the last question)

Mr. Rathbun: In percentage.

Mr. Vitousek: If the Court please, we object to

(Testimony of C. C. Crozier.)

that question. It's improper cross-examination in the first place, based on a lot of assumptions. It has nothing to do with the matter. As the witness has testified, he did not specifically take each year's earnings or did not use the earnings specifically, but took the general record. I don't know how anyone could ask a question—how were they paying dividends? He is assuming that they are paying them out of the earnings that year. They might be paying them out of the earnings over a long period of years. It doesn't necessarily follow. It's not an intelligible question.

Mr. Rathbun: It is perfectly intelligible. I'm not assuming, I'm assuming nothing that is not in the question. [1731] I'm asking him to assume that six percent was paid the year before I have a perfect right to do that, to test his knowledge, if your Honor please.

Mr. Vitousek: May we have that question read again now? I don't think it tests his knowledge.

The Court: Will you read that question?

(The reporter read the last question)

Mr. Vitousek: My recollection is, if the Court please, he testified there was a profit in those two years and losses in '38 and '39.

Mr. Rathbun: I'm not saying that. I'm asking to assume what I asked.

Mr. Vitousek: You said—

Mr. Rathbun: It makes no difference what's in there.

(Testimony of C. C. Crozier.)

Mr. Vitousek: You said assuming that the loss has been testified to in the question. He didn't so testify in '42 and '43, reading from the reports. You have them. It shows there was a profit.

The Court: Yes, but he's asking him this question to assume that in fact there was for those two years a loss.

Mr. Vitousek: May I get that again?

(The reporter reread the last question)

The Court: I know from the way you raised your hand there what you had in mind. But the whole question strings together. It starts out with an assumption, and he kept on adding assumed [1732] facts. It's very clear that the whole question is built upon an assumption.

Mr. Rathbun: Certainly.

Mr. Vitousek: If the Court please, we are asking this witness to assume that he testified, which are not facts in the record, or an assumption.

Mr. Rathbun: They don't have to be.

Mr. Vitousek: He can assume and make a clear assumption but he can't assume that there is this loss you testified to when he didn't testify to a loss.

The Court: No, the question doesn't imply that this witness testified to that. I think the question is all right. If the witness can answer it, he may. You may have an exception to the ruling. Do you understand the question?

The Witness: I do not.

(Testimony of C. C. Crozier.)

Q. You do not? What don't you understand about it?

A. Well, in the first place, assuming that when you make your—that your capital was four million dollars when you paid your six percent dividend—

Q. Yes, all right.

A. —that is correct. Then in the year 1942 the loss I testified to—is that the damage, is that the damage or is that the loss transferred on these statements?

Q. Shown by these statements. I used the exact figures.

A. You talked about the loss that I testified to. I'm getting mixed up between what losses.

Q. On these documents.

A. I have just read those. Those are not my losses.

Q. Well, who said they were? We all know they are not yours.

A. Then on the assumption it shows the loss of '42 and '43, what dividend or what percentage, percentage of what, my million dollars?

Q. It would make a difference in the dividend that would be paid, wouldn't it?

A. If they were actual losses, such losses that the company couldn't pay dividends out of other items, or the like, it would make a difference.

Q. It would make a difference in your valuation if you used earnings as a basis, wouldn't it?

A. That's correct.

(Testimony of C. C. Crozier.)

Q. Illustrating it again—the year 1939, the loss for that year is \$197,559.11, as I told you before.

A. That's correct.

Q. And as you know, in 1942 they showed a net profit of \$233,668.37.

A. That's correct.

Q. Now, that difference in those two years, if they were consecutive, would make a big difference in the valuation that you had, that you'd give these properties because of the taking of the 1087 acres, wouldn't it?

A. Specifically on earnings, yes. [1734]

Q. If you used earnings?

A. Yes.

Q. That's the question. And you didn't figure those earnings when you arrived at this?

A. Specifically, no.

Q. And still you took them into consideration in arriving at your value?

A. I did.

Q. And it is part of your opinion?

A. I did.

Q. Now, earnings are variable things, of course, aren't they?

A. They are.

Q. They depend upon many things?

A. Many, many things.

Q. One of the things that they depend on is management, isn't it?

A. That is a factor.

Q. One man might take a plant and make money on it, and another man would take the same plant and lost money on it?

A. All things being equal, yes.

Q. Depending on their position, ability or lack of it?

A. All other things being equal, yes.

(Testimony of C. C. Crozier.)

Q. You'd think that's rather a hazardous thing to base property on, wouldn't you? [1735]

A. Well, it would be a long stretch between management and physical property.

Q. Well, it's so variable. How can you use one figure? A. You can't use one figure.

Q. What did you use when you took earnings into consideration here?

A. Well, as I said before, that in the review of the Honolulu Plantation and my knowledge of it, that it had been well-managed, economically-managed, it had been a growing concern, that over the years it had made money and had a dividend record.

Q. Regardless of how much?

A. Regardless of how much, except within its enterprise set-up.

Q. For the last four years, then, previous to these takings in 1944, if they had lost money every year and it had been different in amount, that would have made no difference to you? You just looked at it as a loss, is that it? It wouldn't have affected your value at all?

A. That is correct.

Q. You made no distinction from year to year?

A. That's correct.

Q. Likewise, if it was profit for the four years and it varied as much as \$500,000 a year in the successive years, that wouldn't make any difference to you in your valuation? [1736]

A. It would if the profit—

(Testimony of C. C. Crozier.)

Q. If you based it on earnings?

A. If the profit was excessive, yes.

Q. If the profit was excessive? A. Yes.

Q. What has that got to do with it?

A. Well' you've got a corporation of four million dollars and it makes a million dollars a year, you're making a lot of money.

Q. That's right, but what has that got to do with it?

A. It's got a lot to do with the value.

Q. Well, what is it?

A. Well, you've got the hazard and stability and many factors that enter into a corpoartion of that nature.

Q. What effect would it have as to the valuation of your property?

A. Well, in the low spots you might have to adjust the low earning period as against the excessive earnings viewed as to discount to get some fair return of earnings on this corporation set-up.

Q. And fair return of earnings is what you base your opinion on as far as earnings are concerned, isn't it? A. That's correct.

Q. You get a lesser return because you've got capital invested that you can't get a proportionate return on with the [1737] lesser acreage, is that what you mean to say in this case?

A. In earnings, yes.

Q. Yes? A. Yes.

Q. And that's a large part of your valuation

(Testimony of C. C. Crozier.)

basis, isn't it? A. It is not.

Q. What percentage of the million dollars of the before and after difference would be ascribable to earnings? A. I have no idea.

Q. Figure it for me. A. I can't.

Q. You can't possibly do it?

A. It is an intangible item.

Mr. Rathbun: That's all, your Honor.

Mr. Vitousek: You mean is that all the cross-examination?

Mr. Rathbun: That's what I said.

Mr. Vitousek: All right. Your Honor, it's one o'clock.

The Court: On Monday, December 30th, this case will continue, and at that time you may examine Mr. Crozier on redirect examination.

(The Court adjourned at 1:00 o'clock, p.m.)

Honolulu, T. H., January 6, 1947

The Clerk: Civil No. 514, United States of America versus 257.654 acres of land, and Civil Nos. 521, 525, 527, 529, 532, 533, 535, 536, 540, 544, 548 and 684, for further trial.

The Court: Are the parties ready?

Mr. Vitousek: Ready, if the Court please.

The Court: Very well, you may resume.

Mr. Vitousek: If the Court please, at the last hearing Mr. Crozier was on the stand and cross-examination had been concluded, and we have no redirect, so we'd like to call Mr. Spalding.

The Court: Your recollection may be correct. I hadn't been conscious of the fact that cross-examination had been terminated. Is that your recollection, Mr. Rathbun?

Mr. Rathbun: It is my understanding.

The Court: All right.

Mr. Rathbun: I have a motion.

The Court: All right.

Mr. Rathbun: We move to strike the testimony of Mr. Crozier, particular testimony, all of the testimony that he gave dealing with an alleged custom to renew leaseholds in the islands. Exhibit 14 was introduced to illustrate the situation. I move to strike the exhibit also. And all of his testimony [1739] relating to Exhibit 15 in the exhibit regarding total area in fee, and in leasehold, with percentages for the Territory, for the Island of Oahu. We also move to strike Exhibit 16 and all testimony in connection with the showing of the holdings of the Honolulu Plantation Company, both leasehold and fee, for the reason that nothing in the evidence from a legal standpoint justifies anything except the cases involved in this trial. We move to strike all of his testimony given in connection with the question as follows: What do the big estates do with these lands to get income from them? And to strike his answer made, and among others, that is, to the effect that as a general rule a lessor renews the leases. I move to strike his entire testimony because he has considered and relied upon certain elements forming his opinion of the value on the before and after

basis which elements are wholly improper under the law, namely, profits, earnings, dividends, book value, capital investment necessary to operate 4,400 acres of enterprise. Further than that, his testimony shows that he didn't know what these profits, earnings, dividends, book value, capital investments were and yet he considered them in his opinion. Also, because he said he considered that all the leases ran to 1965 when it is the Government's contention that the Damon lease terminated on December 31, 1943. Further, on cross-examination he showed an utter lack of familiarity with the leases, made no effort to find out what the conditions and terms of the leases were at [1740] the time he formed his opinion. Further, because he has not made any appraisal of this property previous to the time he testified in this case.

Further, I move to strike all of his testimony for the reason or in regard to severance damage because, although he attempted to value the property on the before and after basis, he didn't value the mill property before or after; he didn't value the machinery before or after; he didn't value the irrigation system before or after; he didn't value the railroad rolling stock before and after; he didn't know the amount of the fee; he didn't value it, he had no idea as to the extent of the fee ownerships.

For the further reason that he admits no basis for a lower valuation for the mill. machinery, irrigation system, flumes, roads, railroads, pumps, electrical system, hospital, machine shop, leaseholds, had no specific information in regard to any of these before he came to his opinion in this case.

Further, although he didn't value or have the necessary information of the value of those things that made up the Honolulu Plantation Company holdings, he was nevertheless able to give in his testimony an over-all valuation.

Further, he says he considered moveables in his valuation on cross-examination. This was directly contrary to his testimony on direct, in which moveables were excluded. As his testimony stands, there is no way of telling how much he based [1741.] on moveables and how much he didn't base on moveables. He didn't, he can't give any specific figures as to moveables.

Further, he admits that although there's 387 acres of fee land, he didn't value it at all, although it is included in his estimate of a thousand dollars an acre which he used as his basis for the reduction in value.

He had no knowledge of the improvements, as to their size, cost or other features about them. Still they are included in his thousand dollars per acre. He doesn't know how large the mill was before or what it should be after. The same as to production. He has no information as to the before and after situation as to production. Yet he says that the mill is too large.

Further, he admitted that although he considered the earnings in reaching his opinion, he didn't then and didn't at the time he testified know what those earnings were that he is supposed to have considered. He admits the term "earnings" is a variable term and to have made a study of it. Relying

on this as a basis, he should have had definite figures before him. Otherwise, he is in no position to give an opinion on anything. The prospective earnings are speculative and cannot be used as a basis for valuation under all of the authorities.

Further, he admits the physical value of all the property is not affected up or down by these takings. Therefore, he obviously bases his opinion upon the decrease of value upon the [1742] lessening of the earnings. This is a mere frustration of profit making, which is a business damage and is not compensable under all of the authorities pertaining to condemnation cases.

The Court: Mr. Vitousek, do you wish to be heard on the motion?

Mr. Vitousek: If the Court please, this motion is rather complicated as it confines several motions in one, the motion as to specific testimony, and a motion as to general testimony. But listening to it, the general purport of it is not properly a motion to strike but an argument as to the weight of the testimony of Mr. Crozier. In the first place, Mr. Crozier was asked many questions and stated he did not recall, for example, the amount of acreage of fee land. He said he didn't recall but could recall from a memorandum. He was given time to go get the memorandum which he had and he gave the exact acreage involved. He stated that he had before him the reports which are in evidence here, the annual reports of the company, that he had before him, the tax returns that he had before him, the general knowledge of the plantation, of

the dividends paid, and the reports themselves show the earnings. He had full information that anyone would need to place their opinion of value of this property. He stated that the values of the personal property, that is, the moveables, the moveable personal property, according to my notes, were the same after as before. [1743] So that is immaterial. He stated that it is true, and we stated in our opening statement to this Court, that in this Territory it has become the custom and business practice which is relied upon to conduct enterprises such as this on leasehold property. It has become such an established practice that it is one that any person—and that's what this comes down to—any person, a willing buyer would certainly take that into consideration. And while it has been shown that in this particular date of the takings there was no general market for property of this kind, nevertheless the Court has stated, and stated repeatedly as the Court has stated in the Baetjer case, that it is proper to take into consideration such elements as a hypothetical willing buyer would take into consideration. And certainly any hypothetical willing purchaser who has been out to purchase the property comprising the enterprise known as the Honolulu Plantation Company would take into consideration the very facts that Mr. Crozier took into consideration. The general business practice, the fact that the property here is closely held, that the landlords are largely estates that hold it to gain their revenue from renting, leasing property, and will continue so to do—the

reports that Mr. Crozier stated he had before him, and the Court will recall that he also stated he had the returns both of the landlord and of the tenant, showing what areas were leased, that the question then was resolved between them, and then he took up the question of classification, and that was [1744] resolved. So the only question that was open was not as to the terms of the lease but the classifications of the lands, the first class or second class cane lands, and so forth. That was then adjusted.

Now, if the Court please, this particular exhibit, Exhibit 13-T, gives a full summary of the terms of these leases. But it is impossible, would be impossible for any witness to go on this stand and from memory give the terms of the leases, the area and acres of the land, the classification or any other such detailed information. That's what Mr. Crozier was asked to do. But when he was permitted to refer to the form and the date that he had before him when he made his study of this plantation, he did give the answers. When he was given permission to go over and get his notes which he used, he came back and to this Court gave detailed figures.

The whole question, if the Court please, the principle of it, is stated in the Baetjer case:

"In short the stricken evidence would indicate a compensable loss only if it means that after the taking the appellants' mills had an uneconomic over-capacity so that they could not be operated by anyone as efficiently and therefore as profitably

as before the taking, this being a matter which a hypothetical willing buyer would consider in determining what he would pay for the property."

Now, if the Court please, in these takings here involved, [1745] as we called the Court's attention to the General Motors case, it is not necessary, nor has there ever been any decision cited by counsel, that we must take each particular item of property of a going concern, mind you, value it separately before and after the taking. In the General Motors case it distinctly gave what is considered property within the meaning of the Constitution of the United States in regard to such takings. That includes leaseholds. It includes all property for which you have a right of use. And in this particular case, not only in this witness but in the other witnesses the evidence was not as to depreciation in value of a mill. Suppose we take a mill. The evidence shows the mill as composed of a chain of rollers, apparatus to wash the cane, boilers to generate steam to run the engine; that goes into vacuums; the juice when extracted goes into vacuum pans and reboiled and reboiled; then it goes through various other processes until the final, until it finally goes into the centrifugals, and out comes raw sugar which is reboiled and out comes white sugar. If we follow this to its logical conclusion, you'd have to value each train of miles—you'd have to value the building separately, you'd have to value the engines. But it is all part of a going concern. And it has been the evidence consistently, showing consistently that fact right

from the beginning of this case, and from the testimony of Mr. Austin and the testimony of everyone else, that the property is brought together, integrated as a whole and conducted as a whole [1746] in this enterprise for the growing of, manufacture of raw sugar, and from the raw sugar into white sugar.

Mr. Crozier's testimony as given in this Court was very consistent, in spite of the very gruelling cross-examination that he was subjected to. He stated, as did other witnesses, that he did not place a money value on any of these particular items. In other words, he did not take into consideration the profits as such, capitalize them, and arrive at a value by capitalizing prospective profits, either the future or the past.

Now, in the Baetjer case the question that the Court was immediately considering was the value, was the loss in value of the excess equipment that that particular matter was, that particular matter being the mill. And the evidence was that "... they had suffered a loss to the extent of \$270,000 in value of excess equipment." The meaning of the phrase just quoted is not altogether clear. If it means that after the taking the appellant's mills had an uneconomic overcapacity so that they could not be operated by the appellant as efficiently and therefore as profitably as before the taking, then the stricken evidence shows only a loss to business which resulted as an unintended incident of the taking, and so a loss not compensable under the doctrine of Miller against the United States. On

the other hand, if it means—and there is other evidence tending to show that this is what the witness who used the phrase meant by it—that the overcapacity of the mills with respect to cane land [1747] available to supply them has depreciated their value on the market to the extent of \$270,000, then the evidence would tend to show a compensable loss. “In short, the stricken evidence would indicate a compensable loss only if it means that after the taking the appellant’s mills had an uneconomic overcapacity so that they could not be operated by anyone as efficiently and therefore as profitably as before the taking, this being a matter which a hypothetical willing buyer would consider in determining what he would pay for the property.”

Now, that’s the evidence here. Say this mill will cost more to operate and they tried to recover for the increased cost, that would be a business loss. But if the evidence shows that the mill—and I am only using the mill as an example—because of the fact that it was built to a certain capacity and no longer available for operation of the amount of cane that it was built to operate, became less in value, not only to this enterprise but generally would be less valuable than before the taking, then there is a loss that can be recovered. And that in effect is the holding in the Baetjer case and in the other cases that we brought to the Court’s attention. If a witness goes on the stand and considers only profits, it might be said that there was a certain element of speculation as to what might occur

in the future. But when a witness goes on the stand and takes into consideration the fact that this had been a profitable enterprise, as the record clearly shows it had been, [1748] that by reason of these takings it dropped from a 22,000 ton plantation to a 15,000 ton plantation, that it will be all of the properties comprising the enterprise, the mill, the irrigation system, the other improvements, dropped in value, then that indicates a loss that is recoverable in an action such as this. And that's the evidence given by Mr. Crozier and the evidence given by all the other witnesses. It stands to reason that if anyone was going out there, assuming that the plantation company could continue, and the evidence shows that when it dropped to a 15,000 ton plantation it could no longer continue, therefore it became a question of doing the best thing possible to get rid of it. But assuming any willing purchaser going there would say they have here a mill for a 22,000 ton capacity when all I need is one for 15,000. He would pay not for one that would manufacture 22,000 tons but would pay for one that would manufacture 15,000, which would be less. And that is the question here.

In the absence of market at that particular date, there being none, you can consider fair value. But still the same test would apply. And we are no more confined to taking up each item separately and saying, did you attach to that a money value? No. Because you wouldn't operate a plantation that way. Nor would you sell a plantation that way, if it was a going concern. If it ceases to be a going

concern and you must liquidate, then you sell it the best way you can and may take [1749] the individual items. But when it is a going concern, and that's what it was prior to these takings, then you sell it as a whole. Now, it is the same principle in that case as there was involved in the case I cited to your Honor previously. That's the Stephenson Brick Company against United States, 110 Federal 2nd, 360, reading from page 361. The question there was the value of a plant which was to manufacture bricks, and they claimed damage to the plant because of the taking of certain of the lands.

"The owner is entitled to be compensated not only for the separate value of the land taken, but also for the loss in value of the remainder of the tract in the use that was made of it at the time of the taking. There being no established market price, the fair value at the date of the taking of the whole plant, excluding personal property, ought to be ascertained, looking upon it as a plant organized for a business shown to be generally successful and having a good prospect; and also the fair value for sale of what was left afterward. The difference in the values is the just compensation to be paid."

Now, it didn't require in that particular case to value each particular part of that plant. It took into consideration the plant, the property as a whole, the purpose for which they were using it.

Now, in the particular instance before this Court, the particular case, the properties as a whole are

combined and used [1750] for one purpose, and that is a sugar enterprise, growing sugar, growing cane, manufacturing it into sugar, purchasing outside raws and manufacturing them into white sugar. There is no difference in principle between doing that and between making bricks. That was the enterprise involved in the Stephenson Brick Company case, and in this case the enterprise involved is one to make sugar. And that is the evidence that was given before this Court.

As to the weight of that evidence, now is not the time to argue it. That is something for the Court to decide and something for counsel to argue at the close of the case. As to its admissibility, it is certainly admissible under the decisions of these courts.

The Court: What have you specifically to say to those exhibits admitted conditionally?

Mr. Vitousek: If the Court please, on those—

The Clerk: Fourteen to sixteen.

The Court: Did you include 14, Mr. Rathbun?

Mr. Rathbun: Yes, your Honor.

The Court: Fourteen, fifteen and sixteen.

Mr. Vitousek: Well, now, if the Court please, the first one relates to the point I was making and Mr. Crozier made in his testimony, and that is the fact that the lands on these islands are closely held; they are closely held by landlords, estates chiefly, and the only way an enterprise can be conducted, [1751] such as this, is by leasing the land. And that's the business in which the estates are in—they lease the land. And the business of

this particular defendant is in using those lands as lessee for the growing of sugar cane. It tends as an accident in proving, in the chain of proof or a link in the chain of proving and showing that this was a sound enterprise conducted in the customary business manner in which enterprises could be conducted in the Territory, and particularly in the City and County of Honolulu. The next one, 15, relates to cane acreage, both fee and leasehold, showing the percentage of each, which is simply a summary tied up with the first. The third is the same, applied to the Honolulu Plantation Company, showing the percentage of fee, incidentally, showing exactly in acreage and percentages. Certainly Mr. Crozier had it before him, but he couldn't pull out from memory the exact figures he made up in this exhibit. And then it is reducing that to percentage and fee and leasehold.

Now, in the opening statement we said that this — and we intended to show that — is what was known as a leasehold plantation. The evidence shows the plantations in this Territory are well-known by two classifications, one, whether irrigated or unirrigated, and two, whether leasehold or fee. And if leasehold or fee, there is a difference in the value. One was placed, I believe, roughly at \$1,500 and the other \$1,000 an acre, \$1,500 for fee and \$1,000 for leasehold, the fact being [1752] that is requires less capital investment. In other words, if I was going to buy that plantation I wouldn't have to put up as much money as a purchase price for leasehold as I would for fee

simple. And that's where these exhibits tie into the story.

The Court: Do you wish to be heard, Mr. Rathbun?

Mr. Rathbun: No, your Honor, we stand on the record.

The Court: It is rather a large motion to digest. I think the best thing to do at this time is to overrule the motion and grant you an exception. And that is the ruling of the Court. You may swear the next witness.

Mr. Driver: Might I inquire, your Honor, is that one of the reasons for your Honor's ruling, that it is too elaborate for the Court to consider?

The Court: Yes.

Mr. Driver: Well, then, may we renew it item by item and have a specific ruling on it?

The Court: At this time?

Mr. Driver: Yes. In other words, we quite agree that this is a large order for anybody to consider; neither do we want to be precluded under the well-known established rule that an objection of this sort must be specifically and particularly brought to the Court's attention. In other words, we don't want to fall into that criticism simply because we put it in this form.

The Court: Well, if it will be of any assistance to you, [1753] I'll give you an exception on each one of the grounds mentioned in the motion. Is that what you have in mind?

Mr. Driver: Yes.

The Court: Very definitely I'll give you a specific exception to each one of the grounds mentioned in the motion. All right.

Mr. Vitousek: If the Court please, may we have a short recess?

The Court: All right.

(A short recess was taken at 9:35 a.m.)

After Recess

PHILIP EDMUND SPALDING,

a witness called in behalf of the Defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Vitousek:

Q. What is your full name?

A. Philip Edmund Spalding.

Q. And what is your position?

A. President of C. Brewer and Company, Ltd.

Q. How long have you been President of C. Brewer and Company?

A. Since March of '41.

Q. And were you connected with that company before that date? [1754]

A. In connection with that company since October of 1924.

Q. When you first went with the company, what was your position?

A. My position was in charge of the merchandise and purchasing department.

Q. And?

A. And I had that as a major portion of my business, for my part of the business for about three or four years. I then moved into an executive position with the company. I think I became a

(Testimony of P. E. Spalding.)

vice-president in 1928 or '29. I don't remember just when.

Q. And when you were in the executive position, what in general were your duties?

A. Well, it had generally to do with all the various plantation enterprises that C. Brewer and Company represent, in connection with their leasing of land, purchases of land, sales of sugar, negotiating contracts.

Q. Would you state in general the business of C. Brewer and Company?

A. C. Brewer and Company is the agent for 12 plantations.

Q. Sugar plantations?

A. Sugar plantations, which means that they handle the sale of sugar, the financial necessities of the various plantations, the tax problems, real estate problems, labor problems, planter problems, shipping, transportation of every kind, in [1755] general act as a sort of a managing director.

Q. It supervises the activities of the plantation?

A. That's it, simply.

Mr. Rathbun: Would you mind letting him testify, Mr. Vitousek?

Mr. Vitousek: Well, I think, if the Court please, that was a question of the summary of what he stated. I'm not trying to lead the witness.

The Court: I'm sorry, I didn't hear what was going on. I was talking to the Clerk.

Mr. Rathbun: I was suggesting that he let the

(Testimony of P. E. Spalding.)

witness testify, not him. He didn't summarize at all by his question.

The Court: If you will refrain from that, please—

Q. What is your connection with the Honolulu Plantation Company, the defendant in this case?

A. My position is that of attorney-in-fact for the company, and at the present time I am the Vice-President of the Company.

Q. Vice-President?

A. Vice-President of the Honolulu Plantation.

Q. Of the Honolulu Plantation Company?

A. Yes.

The Court: Mr. Vitousek, are you all right?

Mr. Vitousek: Yes, your Honor.

The Court: You may sit down while asking questions. I [1756] think we had better continue this case tomorrow morning.

Mr. Vitousek: Yes, your Honor.

The Court: Is it all right with you, Mr. Rathbun?

Mr. Rathbun: It's all right with me.

The Court: We'll adjourn until tomorrow morning.

(Due to Mr. Vitousek's illness, the Court adjourned at 9:53 o'clock, a.m.) [1757]

Honolulu, T. H., January 8, 1947

The Clerk: Civil No. 514, United States of America versus 257.654 acres of land, and Civil

Nos. 521, 525, 527, 529, 532, 533, 535, 536, 540, 544, 548 and 684, for further trial.

The Court: Are the parties ready to proceed?

Mr. Vitousek: Ready.

PHILIP EDMUND SPALDING,

a witness in behalf of the defendants, having previously been sworn, resumed and testified further as follows:

Direct Examination—(Continued)

The Court: Mr. Spalding, you are mindful of the fact that you are still under oath?

The Witness: Yes, sir.

By Mr. Vitousek:

Q. Mr. Spalding, I hand you Exhibit 4-A, certified copy of a power of attorney, Honolulu Plantation to P. E. Spalding, L. D. Larsen, W. Jamieson and H. T. Kay, and ask you if you are the P. E. Spalding named in that document?

A. Yes, I am.

The Court: You will have to speak louder so everyone can hear you. A. I am. [1758]

Q. And I also hand you Exhibit 4-B, power of attorney, Honolulu Plantation Company to P. E. Spalding, S. L. Austin and/or H. T. Kay, and ask you if you are the P. E. Spalding named in that instrument? A. I am.

Q. Will you state to the Court in general your knowledge of the Honolulu Plantation Company and its affairs?

A. Well, I have been identified with Honolulu

(Testimony of P. E. Spalding.)

Plantation Company ever since my connection with C. Brewer and Company in 1924. I have a general knowledge of the whole plantation operations, not detailed, but a general operation, financial affairs. I was very instrumental in the negotiations of the major leases that were renewed in 1936, and in general had a great deal to do with the sales of their refined sugar and the marketing of the sugar.

Q. Have you been at the property, the location?

A. Many times.

Q. And have been over the properties?

A. I have been over the properties on many different occasions, so that I know, I know them well physically.

Q. How about the mill, have you been over that?

A. I'm not a mill expert. I couldn't tell you the different pieces of machinery, but I know the mill. I know its make-up and how it operates.

Q. And the irrigation system? [1759]

A. In general.

Q. Now, you stated you had a large part in the negotiation of the renewal of leases. Will you state whether or not you are familiar with the outstanding leases whereby Honolulu Plantation Company holds land?

A. Yes. Well, the major leases were with the Bishop Estate, the Austin Estate, Queen Emma Estate, Damon Estate, the McCandless lease, and the lease with O. R. & L. would be the major leases.

(Testimony of P. E. Spalding.)

Q. Will you state your knowledge regarding generally regarding the growing of cane, the manufacture of the same into sugar? Are you familiar with that?

A. I know the general procedure, yes.

Q. It has been your business?

A. It has been my business for 20 odd years.

Q. Now, Mr. Spalding, I want to call your attention to Exhibits 13-A to 13-T inclusive, the annual reports of the Honolulu Plantation Company, years 1924 to 1943 inclusive, and ask you if you are familiar with those, the contents of those reports?

A. Well, I am familiar with them. I have gone over them in times past. I probably don't remember the details.

Q. You have gone over them? A. Oh, yes.

Q. And what in general do those reports contain? [1760]

Mr. Rathbun: I object to that. They state for themselves what they contain.

The Court: The objection was that they speak for themselves.

Mr. Vitousek: If the Court please, the reports contain figures, but from where they get the information, and so forth, that's what we are referring to, how these reports are built up.

The Court: That's a different question. I think the objection as stated to the question is good.

Q. Mr. Spalding, turning to Exhibit 13-T, this 13-T contains pages 10, 11, 12, 13, 14, 15, and un-

(Testimony of P. E. Spalding.)

numbered pages following 15, a series of computations and figures, and at the end in a blue document attached also a series of figures. Do you know where those computations were taken from?

A. They were all taken from the books of the company. They are the summary of the company's accounts.

Q. Now, on the blue sheet attached to the end of the document, at the top is what they call Exhibit "H". That shows a summary of the leases?

A. Of the leases.

Mr. Rathbun: I object. That speaks for itself what it shows.

The Court: Isn't that so? Isn't that so, that the summary speaks for itself? [1761]

Mr. Vitousek: If the Court please, it is quite true the summary speaks for itself, but the Court will recall counsel said that these reports do not accurately reflect to the purchasers of stock the full information.

Mr. Rathbun: I didn't state any such thing. I asked questions of a witness to that extent.

Mr. Vitousek: Yes, he asked questions of the witness that indicated that, and I am trying to show that these are the reflection of the records of the company. This particular exhibit is part of the general exhibit, Exhibit "H", which shows the summary of the leases.

Mr. Rathbun: All of which doesn't make it proper for him to say what that shows.

(Testimony of P. E. Spalding.)

The Court: I think the objection is good. It speaks for itself.

Mr. Vitousek: Exception, if the Court please.

The Court: You may have an exception.

Q. You stated you were familiar with the leases, as I recall it. Will you examine the summary contained on Exhibit "H" and state whether or not in your recollection that is accurate?

A. Yes, that is the statement of the major leases of the company.

Q. Now, Mr. Spalding, in regard to the Honolulu Plantation, would you give your opinion as to whether or not it [1762] has been successful or unsuccessful prior to the date of the first takings here in June 21, 1944?

Mr. Rathbun: I object to that as incompetent, irrelevant and immaterial; it calls for a conclusion. That is not the proper way to prove this thing.

Mr. Vitousek: If the Court please, this person is the man who has handled these plantations, and if there is anyone that would know, he would know. It calls for an opinion. That's quite true. That is based on information, the same as the other witnesses testified as to the profitableness or unprofitableness, and subjected to an examination on the same. This man has shown that he is the one actively in charge of this plantation here and its affairs, familiar with its affairs, and certainly can give his views on that subject the same as he can give it on other matters pertaining to this plantation.

(Testimony of P. E. Spalding.)

Mr. Rathbun: The rules of law say otherwise. The witness can't testify to conclusions just because he has knowledge of something. He must testify to facts.

The Court: No doubt the witness has an opinion on this subject but I am not inclined to think that I can receive it. We are interested in facts and the facts from which that issue could be determined seem to me to be reflected in the documents that are here in evidence. I think the objection is good.

Mr. Vitousek: Well, if the Court please, I'd like to be heard further on that matter. [1763]

The Court: All right.

Mr. Vitousek: We spent a lot of time in evidence on this. We find in every case cited they give an opinion as to the profitableness or unprofitableness of it. The facts may speak for themselves but counsel in his examination tried to say, to read different facts into the reports, or different inferences. Now, the witness in testifying can testify as to the placing of value on this enterprise. He certainly can consider whether it's been successful or unsuccessful. That's one of the elements we have gone into and the first time it's been objected to, as to whether it's been profitable or unprofitable. That is a matter of opinion, because while the facts do speak for themselves, if the Court desires to interpret them, it is for the expert to interpret those, the information as contained in these reports.

(Testimony of P. E. Spalding.)

The Court: The situation heretofore has been quite different. We have had people on the stand who purported to be real estate experts appraising the property in certain regard and in connection with that appraisal of the property they have, as one of the factors of their opinion, stated whether or not in their opinion it was or was not a successful operation.

Mr. Vitousek: That latitude is even greater under the authorities representative of that, as this man is the owner and as the owner can testify as to his opinion. He is going to testify as to the loss in value here, and we have done with [1764] him as we have done with the others, to build up a foundation first instead of first asking the opinion and then asking all the reasons. There are two ways of doing it. We chose that particular method. And that, of course, is part of his opinion the same as it may be his opinion as to the effect of the takings afterwards. The latitude is very great. It is a matter for the Court to decide the weight of his opinion, in view of all his knowledge of it, but it is even greater than it is with an expert.

The Court: At this present time, at this particular juncture of his testimony, I don't see it. You may have an exception to the ruling.

By Mr. Vitousek:

Q. In regard to the suits now before the Court, consolidated actions, Mr. Spalding, are you familiar with the properties being condemned under these suits?

(Testimony of P. E. Spalding.)

A. I am in general familiar. I couldn't say just exactly which areas of land in the plantation are covered by the particular suit, but I am referring to the—but I know the land in general, yes.

Q. As I understand it, you said with your knowledge you would then be familiar with the property remaining? A. Yes.

Q. Located at Ewa, Aiea, Pearl Harbor?

A. Ewa area near Pearl Harbor and both sides of Aiea. [1765]

Q. Now, referring to the mill particularly, before the takings involved in these proceedings, what was the tonnage of the plantation?

A. That is these last takings in this proceeding?

Q. That's the last takings. We are only concerned with the last takings involved in these suits in one trial.

A. Well, the area serving the mill had a crop potentiality of around 22,000 tons of sugar a year.

Q. And after the takings involved in these proceedings?

A. Fifteen thousand, sixteen thousand.

Q. In other words, the tonnage of cane to be milled dropped from around 22 to around 15?

A. No, the tonnage of sugar produced from the cane dropped about that way.

Q. What effect, if any, did that have upon the mill, the operation of the mill?

A. It became a very expensive operation.

Q. Could it be operated as efficiently?

(Testimony of P. E. Spalding.)

A. By no means. It was a case of running two shifts part of the year or one shift, or if you ran three shift operation it would be a very short period of the year to accommodate the remaining cane. You didn't have a full year's operation at all.

Q. Now, did that have any effect on the value of the mill before and after the takings? [1766]

Mr. Rathbun: That calls for a conclusion and I object to it for that reason.

Mr. Vitousek: Certainly it calls for an opinion, an opinion on value of the mill.

Mr. Rathbun: It calls for a conclusion. That's my objection.

Mr. Vitousek: Well, I don't know what he calls a conclusion. Anything is a conclusion. But we are asking this witness his opinion on the value of the mill before and after the taking, if it had any effect on it. It's certainly a very material question in this case.

Mr. Rathbun: That was not the question.

The Court: Not the question?

Mr. Rathbun: No.

Mr. Vitousek: May I have that?

(The reporter read the last question)

Mr. Rathbun: That's a question for the Court to decide, on the facts.

Mr. Vitousek: If the Court please, how is the Court going to decide it unless it gets the opinion of the people on the value? From that the Court does decide it. It is true, on the value, but this

(Testimony of P. E. Spalding.)

witness can testify his opinion as to whether the value is more or less. Then we can summarize it by the figures.

The Court: On what theory is this witness presented—as [1767] a real estate expert?

Mr. Vitousek: No, he is not presented as an expert, if the Court please. He has been shown to be the Vice-President of the Company. He has been shown to be the person who has handled the affairs of the Company in Hawaii.

The Court: You have him here as the owner?

Mr. Vitousek: As an owner. We are not presenting him as an expert, although he could qualify himself.

The Court: Well, the thing that disturbs me—it hasn't been objected to and I don't particularly raise it but I will mention it—the thing that disturbs me is how many officers of the corporation can you bring in here to testify as owners?

Mr. Vitousek: If the Court please, we have examined into the rule on that matter. If the Court will recall, we only brought in two. One came in and testified simply in regard to one phase of the case. We are now on the second phase of the case.

The Court: Mr. Austin?

Mr. Vitousek: Mr. Austin. And there is no limitation on the amount except as the Court in its sound discretion can limit any type of evidence. The power of attorney runs to both people. They

(Testimony of P. E. Spalding.)

have both actively been in on the affairs of the company.

The Court: I will allow the question to be answered. You may have an exception. [1768]

A. It had a very material value on the mill, an effect on the value, with this taking.

Q. What was the effect?

A. Well, the effect—I don't know as I can answer that just in dollars and cents, or the effect on the mill itself, but the effect on the property as a whole. The effect on the mill was to make it a very much more expensive operation, of much higher cost operation. Therefore, the value as such was greatly reduced for the work it had to do.

Q. In regard to the irrigation system, Mr. Spalding, that was—

Mr. Rathbun: Pardon me a minute. I move to strike that answer also as a conclusion of the witness relating to the province of the Court, invading the province of the Court.

The Court: Do you wish to be heard on that?

Mr. Vitousek: If the Court please, I've got cases if the Court would like to hear them where he can give his opinion. This is not invading the province of the Court. The question is of the value less before and afterward. The province of the Court is determining the damage. And from a whole group of witnesses the Court will arrive at its conclusion, if there is damage, and if so, what, if any. That is not invading the province of the

(Testimony of P. E. Spalding.)

Court. If so, every expert that goes on the stand is doing it.

Mr. Rathbun: Well, he just stated he wasn't an expert. [1769]

Mr. Vitousek: Well, everyone that gives an opinion. An owner has a greater latitude than an expert in giving opinion.

The Court: He is testifying as one of the owners, and the motion to strike the answer is denied and you may have an exception. Proceed.

Q. Mr. Spalding, in regard to the irrigation system of this plantation, just in general language describe what it is and what it was at the time of the taking?

A. Well, it is a series of pumping units and wells located at different sites in the area. One major irrigation set is of the Hawaiian Electric Company's plant at Waiau where the condenser water is pumped back up into the plantation. That would be the westerly end of the plantation. Throughout the other areas of the plantation are pumps located from lower Halawa and in Aiea itself and scattered through the plantation. There are a series of booster pumps that lift the water from the major sources on up to higher elevation.

Q. Do you have reservoirs?

A. Reservoirs located in different sites.

Q. How about ditches?

A. Oh, yes. Ditches—there are siphons, there are reservoir ditch siphons and pipe lines that cover the whole plantation. The major ditches at

(Testimony of P. E. Spalding.)

450 foot elevation and then there are other major ditches that run across the plantation parallel to it. [1770]

Q. Well, was that irrigation system installed before or after these takings?

A. Well, on that, the date of the takings, it was installed before.

Q. Now, did the takings involved in these proceedings have any effect upon the value of the irrigation ditches?

Mr. Rathbun: I object to that for the same reason, if your Honor please, that it's a conclusion invading the province of the Court.

The Court: Same ruling, same exception.

Mr. Vitousek: If the Court please, I'm asking in general, not the exact amount. That will be brought up later.

The Court: You may answer the question. Do you have it in mind? Do you want it repeated?

The Witness: Yes, I have it in mind.

The Court: You may answer it.

A. It had a very serious effect on the value of the irrigation system because it forced the abandonment of some of the ditches, the siphons, pipe lines, the use of some of the wells and pumps that formerly served that particular area.

Q. Well, now, some of this irrigation system was on lands taken?

A. None of the wells or pumps were on lands taken but the irrigation ditches that served the lands were on the lands taken. [1771]

(Testimony of P. E. Spalding.)

Q. Well, then, you are familiar with the part of the irrigation system remaining after the takings, are you?

A. I wouldn't like to have to describe it but I am familiar in general with it.

Q. Well, that's the part I'm going to ask you in regard to. Did it have any effect on the value of the irrigation system, including wells, pumps and ditches remaining after the taking?

A. Well, it had a material effect because it reduced their efficiency and reduced their economic use. Some of the takings, I think particularly that of the Hawaiian Electric pump that was set in to deliver about 25 million gallons a day, the amount of water being taken from it after the taking was reduced to around 17 million a day. The efficiency was seriously impaired.

Q. How about the electric system, generating—

A. Well, I know there was a generator at the mill of two thousand, I think about two thousand kilowatts capacity, that was installed just before the war.

Q. That remained after the taking?

A. Oh, yes. That was there. There was another unit there also which was an inefficient one.

Q. Well, did the takings have any effect upon the value of the electric generating distribution system?

Mr. Rathbun: I object to that on the same grounds as to the original question. It invades the province of the Court. [1772]

(Testimony of P. E. Spalding.)

The Court: Same ruling, same exception. You may answer the question.

A. Well, I don't think I could answer that question other than this way, that I don't know the power consumption of the various units that were operated by that generator and how much might have been affected by this taking. The company also purchased a considerable amount of power from the Hawaiian Electric Company.

Q. Well, did the takings have any effect on the value of the other property of the company other than moveable personal property, personal property, either increase it or decrease it?

A. Well, the result of these takings was to make it an unprofitable, uneconomic enterprise—

Mr. Rathbun: Just a moment. I couldn't hear that question.

(The reporter read the last question)

Mr. Rathbun: Well, that's a question like the other one. I object to that as calling for a conclusion and invading the province of the Court.

The Court: Same ruling same exception. Did you hear the answer?

Mr. Rathbun: No.

The Court: Read it.

(The reporter read the last answer)

By Mr. Vitousek:

Q. On the date in question involved in the filing of [1773] this suit until June 21, 1944, Mr. Spalding, on that date or on or around about that date, was there any market for a plantation

(Testimony of P. E. Spalding.)

such as Honolulu Plantation Company, a free and open market?

A. No, no, there is no free and open market for a plantation in the Territory in almost any time. Certainly at that time there was none for Honolulu Plantation.

Q. Well, what was the condition of the Territory at that time.

A. We were in a condition of the state of war at that time, and your freedom of action was very restrained. These takings that occurred were taken under rights of entry and they ran along in various small amounts and varying amounts from time to time. There was no court to appeal to. There was no way of getting into court. I don't know whether this is all right, but it went along to a point where I went out to the Navy Yard and asked the Commandant to either desist from any further takings or else bring condemnation suits so at least we could get into court to have a hearing on our damages. And finally I refused to sign a right of entry at one time and reached an agreement with the Commandant that we would not forcibly eject the Navy from the lands that they had moved in on. nor would we bring court proceedings against the individual officers who ordered entry on the land, providing they brought condemnation suits within a reasonable period. And these suits are the result of that understanding. We were simply helpless. [1774]

Q. Now, Mr. Spalding, what in your opinion is

(Testimony of P. E. Spalding.)

the amount of the depreciation in the fair value due to the takings involved in these proceedings now before the Court of the properties of the Honolulu Plantation Company at Aiea on Oahu, near Pearl Harbor, remaining after said takings and used by it in conducting a sugar plantation and manufacturing enterprise conducted at said Aiea, including real property, leaseholds, improvements, permanent fixtures, but excluding moveable personal property and inventories and bearing in mind your knowledge of such properties, your knowledge of the leases whereby the Honolulu Plantation Company as lessee holds certain properties, and assuming the takings occurred June 21, 1944?

The Court: Just a minute.

Mr. Rathbun: I object to that. The witness has shown no qualifications to testify to any such question as that. He never sold a plantation as far as it appears. No other qualification whatever.

The Court: Will you read the question back to me?

(The reporter read the last question)

The Court: Your objection is that he has no qualifications?

Mr. Rathbun: Yes, your Honor, to testify to any such question as that.

The Court: The witness here being allowed to testify as one of the owners—

Mr. Rathbun: That's right. [1775]

The Court: —I will allow him to answer it.

(Testimony of P. E. Spalding.)

You may have an exception to the overruling of your objection. Do you have the question in mind? If you can answer it, you may.

A. Well, the company employed an expert to determine that amount of damage, who I think has testified here.

Mr. Rathbun: I object to that, now. The record shows what was testified to. This man can't adopt it.

The Court: No, you will have to answer the question yourself, if you can.

A. Well, I can testify as to what I considered the value after the takings, if that is permissible.

Mr. Vitousek: If the Court please, I don't know whether the witness understood. It calls for the amount in depreciation of value, not as to the amount before or after the takings. He can testify as to that.

The Court: That's why I had it reread. It was a little different than the other question. Do you want the question read again?

A. No, I understand it now, but it is a very difficult thing to recapture the situation from the position of an owner, when we take a mythical date which is the apparent, which is apparently the date of condemnation and the takings, and taking place over a period of months prior to that time, being very closely associated with the takings, I find it very difficult to put myself back in some later date. I think I could give [1776] an opinion as to the difference in value between before the

(Testimony of P. E. Spalding.)

war and after, but to pick a point along that descending scale of value and say here it is, is difficult for me.

Q. Can you give a minimum figure?

Mr. Driver: Minimum figure of what?

Mr. Vitousek: If the Court please, the witness said he cannot give the exact figure.

Mr. Driver: No, he didn't say that. He said he couldn't answer your question. That's what he really said.

Mr. Vitousek: No, he said it's very difficult. That's what he said.

Mr. Rathbun: It's difficult, of course. It wasn't difficult for the experts at all.

Mr. Driver: This witness is being very frank and straightforward about it.

The Court: The question didn't call for a maximum or minimum. I don't think the subsequent question of a minimum figure is in order.

Q. The answer is that you can't answer?

The Court: To your last question I sustained the objection.

Mr. Vitousek: I understood, and I am asking the witness if he can't answer the first question.

The Court: Apparently you are being asked the same question over again.

Mr. Driver: A further objection if he is. [1777]

The Court: Ordinarily that would be sound, but because of the complicated nature of the question, I will allow it to be restated to the witness. Do you want it read to you again?

(Testimony of P. E. Spalding.)

A. The situation, the situation with the plantation was, a valuable piece of property operating as a profitable concern, which began to lose its value as it—for some time before the war when these lands began to be taken. And then, as the value became a descending curve, not a straight line but a parabola, and at one point it was pushed over the edge, these takings pushed it over the edge from a profitable operating concern to an uneconomic unit, at just what point that was, just what that time was, you can't place, I can't place my finger on it. I know with the takings the company was finished as an operating unit, as an economic unit, as an economic concern. I know what the experts testified to and I think that it is too little.

Mr. Rathbun: I object to that what the experts testified to. They had enough trouble without you getting into it, Mr. Spalding. I think you'd disagree with them if you talk too much on it.

The Witness: I beg your pardon?

By Mr. Vitousek:

Q. Mr. Spalding, as I understood you to say, some time in these takings it was pushed over the edge? A. Yes.

Q. Involved in this suit? [1778]

A. In the takings involved in this suit, yes.

Q. You understand in this question I said to assume they occurred June 21, 1944?

A. Well, that was the date that it went over

(Testimony of P. E. Spalding.)

the edge, if that is the date of it, if it is the date of record.

Q. Well, what did you mean that it went over the edge?

A. It became an economic failure. The property could no longer exist as a profitable concern.

Q. Did that have any effect on the value?

A. Very material effect on the value.

Q. What was the effect in general terms, less or more? A. Much less.

Mr. Rathbun: I object to that. It calls for a conclusion and invades the province of the Court.

The Court: May I have that?

(The reporter read the last question and answer.)

The Court: The objection comes ahead of the answer. The answer may stand. You may have an exception.

Q. Mr. Spalding, as I understand, you said it was pushed over the edge. Now, I want to ask, was there any attempt that you know of, a possibility of replacing the land lost due to these takings?

A. No, there was none. There was no possibility. We tried everything we could try to find additional land, to build the plantation back to a profitable enterprise. We even tried [1779] dry land cane at higher elevation to see if it could be done.

Q. Then this plantation, as I understood from

(Testimony of P. E. Spalding.)

other testimony, purchases raws outside to make whites? A. Yes.

Q. What was the source of those raws before the war?

Q. Raw sugars were purchased from Waimanalo Sugar Plantation and then also from Kaeleku Plantation over at Hana at Maui.

Q. And Kaeleku is out of business?

A. Kaeleku is out of business. There were occasional purchases of other sugars but I don't remember—small amounts.

Q. And during the war?

A. During the war the major source of the raw sugar was from the C. and H., the California and Hawaiian Sugar Corporation. The purchases were arranged through them to draw sugar from their plantations to the plantations with which they hold contracts on this island, to release to Honolulu Plantation Company sufficient sugar to meet the requirements of the community and of the Army and Navy in the Central Pacific. The Honolulu Plantation was requested by the Navy and the Army to take care of all their requirements throughout the Central Pacific.

Q. After the war was over, hostilities ceased, and under peacetime conditions, is there a possibility of purchasing enough raws to keep that plantation going, the mill going rather? [1780]

A. Well, you could possibly purchase raw sugars to meet the local demands here but certainly nothing beyond that, and the total volume of the

(Testimony of P. E. Spalding.)

situation where you are denied your own cane would make it a very unprofitable, impossible thing to operate on. Very little profit in the handling of this refining operation.

Q. You stated that with these takings the plantation was, as you expressed it, was pushed over the edge. What was the possibility, if any, of selling after that date?

A. Well, I approached the Oahu Sugar Company in that period to see if they would be interested in—

Mr. Rathbun: I object to offers and attempts and all that sort of thing, and any attempt to show value in this case, of something that wasn't consummated. It goes under the same rules of all evidence of that kind in a condemnation suit. Offers are not admissible and therefore attempts to offer are not.

Mr. Vitousek: Well, if the Court please, the offer of negotiation, that culminated in a sale; it is not a question of getting into the figures of the offer; it is the negotiation that might have culminated in a sale. The Court will recall that in the cross-examination of Mr. Schmutz the question was—he recited this so-called claim showing the difficulty of selling the plantation to anyone outside. The question was then that he did sell it at that time. And I called the Court's attention to that, that we will have to explain it later. [1781]

The Court: I remember that very distinctly. There was some reference made at that time to the

(Testimony of P. E. Spalding.)

sale of this company that has occurred since these takings, and that you indicated you would bring out at a later date. Is that what you are going into now?

Mr. Vitousek: That's right, if the Court please.

The Court: Well, if that's the purpose, then I will allow it. The objection is overruled. You may have an exception. Will you repeat the question?

(The reporter read the last question.)

The Court: You may continue with your answer.

A. —purchasing, and they said no, that we had nothing to sell, as long as with the war on—

Mr. Rathbun: I object to that kind of testimony, what the Oahu Sugar Company said. It's hearsay and every other objection.

The Court: The objection to that is good. Can you make your question a little more specific so that he won't go all over the lot in getting to the final subject that you said you were going to bring out?

Mr. Vitousek: I think the confusion was probably held to that time. He said there was no sale at that time.

Q. Has there subsequently been a sale of that plantation?

Mr. Rathbun: I move that what the Oahu Sugar Company said be stricken out. [1782]

The Court: It may go out.

Q. May I withdraw this last question? There was an attempt made to sell the plantation around about the date of these suits. Was that unsuccessful?

A. Unsuccessful.

(Testimony of P. E. Spalding.)

Mr. Rathbun: I object to that.

The Court: Just a minute.

Mr. Rathbun: Pardon me. Were you finished?

Q. Well, was it successful or unsuccessful?

Mr. Rathbun: Well, I object to that. It's calling for a conclusion.

Mr. Vitousek: A conclusion whether you sold it or did not sell it?

Mr. Rathbun: Well, that isn't your question.

Mr. Vitousek: I said successful or unsuccessful.

The Court: Those words modifying the word "attempting" to sell.

Mr. Vitousek: I said, was there an attempt to sell and was the attempt successful or unsuccessful. I'm not asking for the success of the plantation or his endeavor to sell or not.

The Court: That question may be answered Yes or No.

A. No.

Mr. Vitousek: If the Court please, it's around the recess hour.

The Court: We'll take our scheduled recess.

(A short recess was taken at 10:00 a.m.)

After Recess

By Mr. Vitousek:

Q. Was the plantation, according to the property of the Honolulu Plantation Company, later sold? A. Yes, they were sold.

Q. When?

A. Under—sold as of January 1st of this year, January 1, 1947.

(Testimony of P. E. Spalding.)

Q. Can you state whether or not the general business conditions were the same as of the date of sale as they were of the date involved in this suit, June 21, 1944?

A. Entirely different conditions. We were in a state of war at that time. Hostilities ceased a year later. We had a year and one-half of nominal peace, and it is a very different situation that existed in a business way.

Q. How about the question of inflation?

Mr. Rathbun: I object to that. What about the question of inflation. What about inflation?

Mr. Vitousek: I haven't got the question out yet, if the Court please.

The Court: State it.

Q. Was there involved in these changes of conditions any question of inflation on it? Was the value of the money the same?

Mr. Rathbun: I object to the value of money. It has nothing [1784] to do with this situation.

The Court: It's pretty far afield, isn't it?

Mr. Vitousek: I don't think so, if the Court please. The question is whether the price paid or the conditions were the same this time as they were then. The question of inflation has gone up—why the conditions may be different. Now, the sale was brought in by them, it was not brought in by us.

The Court: Basically I am wondering why we are going into it at all.

Mr. Vitousek: Because it was brought in by

(Testimony of P. E. Spalding.)

them in their examination. I feel that we are entitled to it now. If the Court please, you will recall they read from this particular document here.

The Court: Congressional claim, exhibit—

Mr. Vitousek: Exhibit for identification. The distance to other mills is so great that the delivery to them would not only be too impracticable but too costly. Then it was brought out it was sold to another company.

Mr. Rathbun: He is referring to Exhibit, Government Exhibit 1, I think.

The Court: Yes.

Mr. Vitousek: For identification. I didn't bring that question in. It was brought in, it was asked by them. Now, we feel we have a right to explain why the sale was, to bring in the sale itself. I think there should necessarily need to [1785] be a connection between the conditions. If they were similar, it would be evidence; if not, it might not be. But the circumstances of the sale in response to that question we have a right to bring in.

The Court: I think in that connection you have a right perhaps to have a general description of conditions, but I don't see any need of getting into the various theories on the extent of inflation. I will allow the witness to compare business conditions as of the date of these takings with the business conditions as of the date of this sale.

A. As they affected the sale, the price of raw sugar for that period, was \$75 a ton, and on January 1st of this year it was \$118.80 a ton, a very material—

(Testimony of P. E. Spalding.)

Mr. Rathbun: I can't hear you. May I have that?

(The reporter read the portion of the last answer.)

A. —a very material increase in price and would have a very natural and material effect on the value of the property sold. And that there was a general relationship between that price of sugar and the price of other supplies and materials. We had OPA in '44 with a ceiling price on nearly everything that was purchased, and January 1st we had none of any effective control. That had a very material effect on the sale price.

Q. What do you mean, the other prices were up in relation to the price of sugar which was formerly at 75 and up to 118? [1786]

A. Well, I mean that the cost of the generator or tractor or truck or any part of the operating equipment, there was a material increase in price—any, most everything you purchase is materially higher.

Q. Now, in regard to the sale itself, did you negotiate the sale?

A. Yes, I negotiated the sale.

Q. Will you state whether or not the sale was on the basis of a going concern or otherwise?

A. We made many studies as to the value of that property, on a break-up and on a sale as a going concern, and so on, and we arrived at a value that we could receive the most from as on the basis of a break-up, on the basis of a break-up,

(Testimony of P. E. Spalding.)

of the property. This sale was, the negotiations started in '43 and carried on over a period of nearly three years before we were able to get the buyers interested, interested in the whole proposal. The Oahu Sugar Company became interested in acquiring the land because they had lost about two thousand, twenty-two hundred acres—

Mr. Rathbun: I object to that, what the Oahu Sugar Company did about acquiring other acres, and what they acquired in another enterprise. It has nothing to do with this case.

Mr. Vitousek: It has to do with the answer to this question as to why they got it, rather the distance to the mill; it is the nearest mill. It has been shown here. And that was the [1787] question that was asked, as to the reason that they would buy it now as against before. In other words, they have lost the land, as the witness stated, and need to replace it, lost it the same as this plantation had through takings by the Government.

Mr. Rathbun: Well, that doesn't excuse trying the Oahu Sugar reasons.

Mr. Vitousek: We are not trying the Oahu Sugar. We are explaining the evidence you brought into the case.

Mr. Rathbun: I say when he says two thousand dollar loss by the Oahu Sugar, that's going into the Oahu Sugar.

The Court: Just a minute. The witness is going beyond the question. We'll get along much better if the witness confines himself to the question,

(Testimony of P. E. Spalding.)

and you state additional questions for him to answer. The basic question was, whether or not it was a negotiated sale.

Mr. Rathbun: And I move that what he said about the Oahu Sugar be stricken.

The Court: It may go out.

Q. Mr. Spalding, if you know, would you state the reasons the Oahu Sugar purchased this property?

Mr. Rathbun: I object to that as incompetent, irrelevant and immaterial, the reasons they purchased it. All that's material here are the prices possibly.

Mr. Vitousek: If the Court please, it materially deals [1788] with this very point that counsel himself brought up. "The distance to other mills is so great that delivery to them would not only be impractical but too costly." Now, that was brought into the suit. The reasons were brought into it by counsel himself on his examination. He opened it up and now we have a right to explain it. If the conditions had changed and the Oahu Sugar lost two thousand acres of land by condemnation, and felt it necessary to replace it, that is the reason. If Mr. Spalding knows it personally, as he testified before and it was stricken, now I am asking him the question directly. It is not going into the damage suffered by Oahu Sugar or the sale. It is just refuting the statement or explaining the evidence that counsel himself brought in on his examination. If that is immaterial, why, of course

(Testimony of P. E. Spalding.)

we are not going into it. But he saw fit to bring it in.

Mr. Rathbun: I saw fit to bring it in pertaining to this company, not Oahu Sugar.

The Court: I'm not too sure that such reasons as Oahu Sugar may have had for purchasing are material. However, the witness may answer the question for such as it is worth, if he can. You may have an exception. Will you read the question?

(The reporter read the last question.)

A. All I can say is that the offices of the Oahu Sugar—the officers of the Oahu Sugar Company told me that it was their reason and interest in purchasing was the fact that [1789] they had lost so much land that they needed to increase their cane production in order to keep the mill at a full operating basis, which made this an interesting, worthwhile purchase.

Mr. Rathbun: I move that that be stricken out for the same reasons that I objected to the question.

The Court: Same ruling, same exception.

Q. Mr. Spalding, various of these reports, I believe commencing with the 1938 report, have shown bank loans on the statements; 1938, \$200,000. Would you explain that loan, please? You can turn to the statements.

A. This particular loan?

Q. Yes.

The Court: That particular report is exhibit what?

Mr. Vitrousek: That's Exhibit 13-O.

(Testimony of P. E. Spalding.)

The Court: Thank you.

A. That probably was due to the fact that that year Honolulu Plantation repurchased from Western Refinery and C and H Refinery a large amount of sugar which had been in their hands for sale. I think they paid them something like \$275,000 for the purchase of that, to repurchase that sugar which was stored in the northwest, I believe. And they undoubtedly borrowed some money at that time to cover that purchase.

Q. Now, there are other statements here showing bank loans. Will you check these reports and handing you the '38 report— [1790]

A. That is '39.

Q. —'39 report, Exhibit 13-P—

A. Well, of course, it is just an ordinary business practice to borrow money. Here they show a loan from Welch and Company of one hundred twenty thousand and of payment of a bank loan of two hundred thousand during the year. It's a common business practice to be borrowing money and go in and out, particularly in a refinery such as this where you may have a great deal of money tied up in inventory.

Q. Well, will you state whether or not the borrowing of money had any relation to the ability to pay dividends?

Mr. Rathbun: I object to that as a conclusion, if your Honor please.

Mr. Vitousek: If the Court please, that is no conclusion. Counsel himself in his examination of

(Testimony of P. E. Spalding.)

various witnesses brought out that they borrowed money and still paid dividends. Now, here is the officer of the company, and we have a right to explain the situation. In other words, not to leave an inference that the company was doing something, borrowing money to pay dividends, when the witness stated it is ordinary business practice to go in and out of the banks.

Mr. Rathbun: The question that I asked was based on the evidence that they put in the case. And the inference to be drawn is for the Court, not for this witness.

Mr. Vitousek: That's all right. We have a right for [1791] this witness to explain the true situation.

The Court: Mr. Reporter, will you read the last question.

(The reporter read the last question.)

The Court: The witness may answer the question. You may have an exception.

A. The borrowing of money had nothing to do with the payment of dividends. It would not, never borrow money to pay dividends.

Mr. Rathbun: I move that the answer be stricken for the reason stated in the objection.

The Court: Same ruling, same exception.

Q. Now, Mr. Spalding, these reports shown here, Exhibit 13, are available for use by prospective purchasers?

A. They are a matter of public record. They are filed with the Treasurer of the Territory.

(Testimony of P. E. Spalding.)

Q. Now, do they have in these reports, do they have in their contents, furnish information as to the fact that the company had suffered losses of land due to takings?

Mr. Rathbun: I object to that as calling for a conclusion to what the reports show, and that is for the Court to determine.

Mr. Vitousek: If the Court please, counsel and in the case of several witnesses asked questions to show that these reports did not contain a statement of the claim of damages due to the losses, or writing off of so-called losses, or any losses due to the takings here as being claimed by us. In other words, they [1792] were misleading and were not complete. Now, if the Court please, these reports were admitted in evidence, only the portion of them relating to the books, the compilation of the books. We propose to show by this witness that all that information is contained in the written matter, all of which was available to the public to be considered; in other words, the lands taken and the lands condemned; that they were open and available; that there is a statement of the claim, that it is not good business practice to actually write it off the books when it is unliquidated, or add it to the books.

The Court: The question is, do these reports show these takings? That is the basic question, isn't it?

Mr. Vitousek: Yes. That is a preliminary question, if the Court please.

(Testimony of P. E. Spalding.)

Mr. Rathbun: That is the question that I objected to.

The Court: You are apparently directing the attention to a part of the exhibit that is not in evidence.

Mr. Vitousek: And we propose to offer it in evidence, the entire exhibit, in view of the questions that had been asked other witnesses.

The Court: The witness may answer the question. You may have an exception.

A. This report of 1943, in the manager's report, draws particular attention to the loss of areas over a period of time. [1793]

Mr. Rathbun: Just a moment. I object to that. You are reading, I take it, from the statement in the beginning?

The Witness: That's right.

Mr. Rathbun: Which the Court excluded. Let me see what you are referring to?

The Witness: This manager's report.

Mr. Rathbun: Well, this part was excluded from evidence, if your Honor please.

Mr. Vitousek: I think counsel didn't hear my purpose. I am going to offer that in evidence. I am just asking him in general. I don't ask for the figures, as to where that information can be found in these reports.

The Court: The question is as to the report as a whole, as to whether or not anywhere in it it contains a reflection of these takings.

Mr. Rathbun: But he is telling now what is in

(Testimony of P. E. Spalding.)

this report that was excluded from the report. He is reading from that. He started to. That's what I object to.

The Court: Well, the question can be answered Yes or No. I take it the answer is Yes?

The Witness: The answer is Yes.

Mr. Vitousek: My recollection in this matter, if the Court please, is that it wasn't offered. We offered in evidence the portion of the reports on stipulation of counsel having to do with directly reflecting the books. Now we are going into [1794] the remaining portion as to what the relation to this case is.

The Court: There is no doubt that at the moment with respect to the annual reports, Exhibit A to the end, the only part in evidence in each one of them is the figures.

Mr. Rathbun: It was on my objection that your Honor excluded them.

The Court: Excluded the manager's report.

Mr. Rathbun: Yes, your Honor, certainly, the president's statement in the beginning of them and all of that.

The Court: I thought it was the other way around.

Mr. Rathbun: Which is nothing but speech-making.

Mr. Vitousek: I never even offered the portion that we are now bringing in. We offered the portion in evidence relating to the book figures so-called, that is, the summary of the book records.

(Testimony of P. E. Spalding.)

There was no ruling of the Court on excluding it or any objection. We said that that was the portion.

The Court: I think we are all in agreement here.

Mr. Rathbun: He offered the document itself. That's my recollection of this record, and I think I'm right about it. And I pointed out to the Court that attached to each one of them was the usual speech by an officer of the company construing certain things, and I objected to it and your Honor sustained the objection to that part of it and admitted only what followed.

The Court: That's right. [1795]

Mr. Vitousek: If the Court please, I'd like to go back to it because it isn't correct as to your Honor excluding it. There was no ruling on it. I said we are just then offering that portion. In other words, we didn't bring it up to an issue for a ruling.

The Court: Well, that may be, but I do know that the only thing that is in evidence at the moment are the figures.

Mr. Vitousek: That is correct.

The Court: Because of objection you limited the offer, and my recollection doesn't go back that far—

Mr. Vitousek: The only point I am making is that there was no definite ruling on it, and we are now bringing it up.

The Court: Well, it isn't before the Court yet.

(Testimony of P. E. Spalding.)

The witness was simply asked the question and answered as to whether or not the reports contained any reflection of these takings, and the answer was Yes.

Q. In what portion of the report is this information?

Mr. Rathbun: Now, may I have that question.

(The reporter read the last question.)

The Court: That's where we got into a discussion, and the question was reframed as to these takings, and that's where the witness answered rather than what you asked. It's substantially the same question.

Mr. Vitousek: But as I understood, the answer was Yes.

The Court: As I understand the testimony to date, the [1796] witness has told us that these annual reports are published records and that they do reflect the manager's portion of the report in these takings.

Mr. Vitousek: That's what I was getting into, in what portion of the manager's report.

Q. Is there a report by the president?

A. There is a statement by the president, there is a statement by the president addressed to the shareholders.

Q. Does that contain, without giving any details, any information regarding takings?

A. Yes.

Q. And any other pertinent information related to value?

(Testimony of P. E. Spalding.)

A. I don't know how much of these figures are in the record. These figures of yield per acre and plantation cane, are they in or do they—because they show—if those figures are in they show a reduction in the crop acres from year to year.

Mr. Vitousek: If the Court please, my understanding is that everything is in except the two reports, the manager's report and the president's report.

The Witness: These figures show, if this is all right for me to say, that the crop in '41 was from 3,335 acres to '42 from a total acres harvested was 3,026, and in '43, 2,924.

Q. It shows the reduction?

A. It shows the reduction in the acreage that was harvested in the figures. [1797]

Mr. Rathbun: I don't know what the purpose of this is. But there is no occasion for showing that by these documents, because it is shown by their own exhibit, the same thing that they introduced in evidence, statements that they had made up. I object to having another word—to make myself clear, I object to having the president or manager. It's quite natural he's not going to say too much detrimental to the management that he has executed during the past year. We all know that. And I am not criticizing them for it, but what he says, construing the figures and the condition of this company, is a bad way to get at it. It's misleading. It's his construction of what the books show to what is attached what is in evidence.

The Court: We haven't got there yet.

(Testimony of P. E. Spalding.)

Mr. Rathbun: That's what he is talking about.

The Court: It's all limited so far as to whether or not there is such information in this annual report.

Mr. Rathbun: If it's simply the number of acres of cane that they had in each year of production, growing cane, that is shown by other exhibits in this case, and I don't see that we need to get mixed up with the president or manager's report on that. They got a detailed exhibit on that.

The Court: I think you are right. The last thing that the witness pointed to was a part of one of these annual reports that was in evidence.

Mr. Rathbun: Well, if it's in the figure part, all right. [1798] I don't know what he was referring to.

The Court: Yes.

Mr. Vitousek: If the Court please, it goes beyond that. The statement, the questions that were asked previous witnesses by counsel for the Government were that there was no calling attention to the public, and we showed these reports were such as would be used, as Mr. Spalding has stated, as the other witness has stated, to any loss due to these takings. In other words, the inference apparently being made that we didn't think there was any loss. Now, we are asking Mr. Spalding if any such statements regarding loss are in the reports, and he said Yes, in the manager's report and in the president's report. Now, for that purpose we now offer into evidence the remaining portion of

(Testimony of P. E. Spalding.)

these reports to show that it was a matter of general knowledge, and it can't be taken that this claim is only being made at this time but as a continuing claim that they had suffered damage due to these takings.

Mr. Rathbun: Are you through?

Mr. Vitousek: Yes.

Mr. Rathbun: I object to the offering on the same grounds, I object to the offering of the president's and manager's reports to which we have been referring, for the reason that my point was not to show that they didn't show the loss of land; my point is and was to show that they ascribe no value to what they lose. That's an entirely different question to what he [1799] stated. That was my purpose. They carried no item on their books showing that they suffered any loss at all during these different takings.

The Court: I think the objection to the admission of the manager's and president's reports in each one of these annual reports is well taken. I don't think that the opinions therein stated will aid the Court at all. You may have an exception.

Mr. Vitousek: I note an exception, if the Court please.

The Court: So it still remains true, the only parts of those reports that are in evidence are the pages containing the figures taken from the books.

By Mr. Vitousek:

Q. I show you a printed document here, Mr. Spalding, headed "Special Report, 1944, Forty-Sixth Annual Report of Honolulu Plantation Com-

(Testimony of P. E. Spalding.)

pany, for the year ended December 31, 1944." Is that the report of the company?

A. That's a report of the company.

Q. Does it purport to be? A. Yes.

Q. And made up similar to the one, similar to the way these other reports were made up?

Mr. Rathbun: I object to that. It speaks on its face whether it's similar or not.

Mr. Vitousek: If the Court please, we certainly have a right to show with this witness whether this truly reflects the records of the company. It doesn't speak for itself when [1800] you just offer a book. It does reflect the records of the company as a summary of such records, if it does, then it becomes admissible.

Mr. Rathbun: That is not the question you asked.

The Court: Is this something already in evidence?

Mr. Vitousek: No, if the Court please. I notice we went up to 1943. This is the '44 report made up during the year involved here. This is one additional report.

The Court: The witness may answer the question. You may have an exception.

A. Yes.

Mr. Vitousek: Now, if the Court please, we offer this in evidence. We offer this report in evidence. In order that there be no mistake, I want to call your attention to page 13. (Handing book to Mr. Rathbun)

The Court: If your comparison is going to take

(Testimony of P. E. Spalding.)

a few minutes, we are pretty close to another recess time and we can take that in advance.

(A short recess was taken at 10:55 a.m.)

After Recess

Mr. Rathbun: No objection.

The Court: This offer includes the whole report?

Mr. Rathbun: Same objection to that also, of course, to the president's report in the beginning, or whoever it is that shouldn't be in evidence.

The Court: Are you limiting your offer?

Mr. Vitousek: We are urging it for the same reason, if the Court please.

The Court: Let me get that straight. You are offering the whole report? You are going to object to the manager's and president's section of it?

Mr. Rathbun: Yes, for the same reasons as objected to the other exhibits.

The Court: The document may be received on the same basis as the others.

Mr. Vitousek: Excluding the manager's and president's reports?

The Court: Manager's and president's reports.

Mr. Vitousek: Could we have that part of the same series?

The Court: Exhibit 13.

The Clerk: The last one is Exhibit 13-T.

The Court: 13-U.

(The document referred to was received in evidence as Honolulu Plantation Company's Exhibit 13-U.)

(Testimony of P. E. Spalding.)

Mr. Vitousek: That's all.

The Court: Cross-examination?

Cross-Examination

By Mr. Rathbun:

Q. Mr. Spalding, I notice on page 13 of Exhibit 13-U statements at the bottom under the heading "Notes", among others [1802] as number three of those notes headed "Claim to Congress." Are you familiar with that claim and what was done in connection with it? A. Not in detail.

Q. Did you have to do with preparing statements and exhibits in connection with it?

A. No, sir.

Q. Nothing to do with it?

A. No, I had nothing to do except general nature.

Q. Do you know about it?

A. I know of it.

Q. You know they were preparing a claim, preparing the claim? A. Yes.

Q. You saw the claim? A. Yes.

Q. You saw the claim after it was prepared for presenting to Congress? A. Yes.

Q. I will ask you to look at Government's Exhibit 1 for identification and ask you whether or not that was the document that was prepared for filing in Congress and whether or not that pertains to the claim that you mention that I have just referred to on this Exhibit 13-U? (Handing exhibit for identification to the witness.) [1803]

A. Yes, this looks like it.

(Testimony of P. E. Spalding.)

Q. Well, look at it carefully now.

A. Well, I can't go through this in detail.

Q. Well, I'm sorry but you must if you want to testify. I want you to say whether that document was the one that was prepared for filing under this claim that you mentioned in this document?

A. To the best of my knowledge—

Q. 13-U.

A. —to the best of my knowledge it is the document.

Q. All right. You haven't even looked at the inside to see who the statements are by either. You'd better look at that. See the signatures, and so forth. That's signed, now, the first statement by Jacobson, president?

A. Yes.

Q. You were familiar with that, weren't you, when it was prepared, filed?

A. I wasn't familiar.

Q. You didn't see this claim before it was filed in Congress?

A. No.

Q. In the form that it is now?

A. No.

The Court: Speak louder.

A. It was completed and prepared in San Francisco and [1804] was filed by—I saw a copy of it after it was completed.

Q. All right. You saw the copy of this document that I am showing you, didn't you?

A. Yes.

Q. To be filed in Congress?

A. Yes.

Q. Did they file that in Congress without showing it to you?

A. Yes, I think so.

Q. Did they?

(Testimony of P. E. Spalding.)

A. Well, now, I can't—I don't know the exact date when it was filed.

Q. Well, there's been some statement here about a different claim being filed than this one. Let's straighten the mystery out. Was this filed in Congress or wasn't it?

A. I can't answer that question.

Q. Well, who can tell me in your organization?

A. Mr. Jacobson could.

Q. Well, Mr. Jacobson is in San Francisco, isn't he?

A. No, he died last year.

Q. Well, all right. He is not available. Anybody in C. Brewer and Company that can tell me what claim was filed in Congress and whether or not that is it and if it isn't how many changes were made?

A. I can't tell you. [1805]

Q. Well, who can?

A. I don't know.

Q. You are the President of C. Brewer and Company?

A. I am the President of C. Brewer and Company.

Q. And you don't know of anybody in C. Brewer and Company that knew that claim and saw it before it was presented to Congress?

A. Well, this is Honolulu Plantation Company.

Q. I understand. But C. Brewer and Company deal with the manager officers in preparation of that claim?

A. No, Mr. Jacobson was the president of that company.

Q. What did Brewer and Company do?

A. Agent.

(Testimony of P. E. Spalding.)

Q. What did they have to do with the presentation of that claim?

A. They prepared many of the detailed statements in the various offices there.

Q. The claim I'm talking about now.

A. The claim was prepared, as I recall it, was prepared by Mr. Schmutz, who testified.

Q. Did he prepare the statement of Mr. Jacobson?

A. Mr. Jacobson prepared that statement.

Q. All right. Mr. Schmutz didn't prepare that, did he? Who got up the statements that are attached to this, the financial statement as an exhibit attached to Mr. Schmutz' report? [1806]

A. I don't know.

Q. Who would know in C. Brewer and Company whether they were prepared here or in San Francisco?

A. I don't know whether there's anybody in C. Brewer and Company who knows exactly where they were prepared.

Q. Where were the books of the company kept?

A. The books of the company are kept here and duplicates in San Francisco.

Q. Therefore the books of the company here were the books from which this was prepared, were they not, these exhibits attached to Government Exhibit 1 for identification?

A. The books here were used in preparing many of the documents there.

Q. Which ones? A. I can't tell you.

Q. Who in C. Brewer and Company knows?

(Testimony of P. E. Spalding.)

A. I don't know that I can tell.

Q. You can't tell me of anybody who had connection with this in C. Brewer and Company?

A. There were many different ones involved.

Q. Well, name them, please. Preparation of this claim I'm talking about and the exhibits attached to it.

A. Oh, I imagine that Mr. Ewart did some of the preparation on some of the land work, Mr. Ewart.

Q. Who else? [1807]

A. I can't—I don't know who did it. The work was done primarily by Mr. Schmutz.

The Court: You will have to speak louder.

A. The work was done by Mr. Schmutz.

Q. Mr. Schmutz didn't make up the exhibits that are attached here to this document, did he?

A. I assume he did.

Q. You assume that Mr. Schmutz went into your books and made out those statements which appear in Government Exhibit 1 for identification?

A. It was prepared, it was completed and put together in San Francisco.

Q. Well, put together and completed. Now, where was it gotten up before it was put together and completed?

A. There are many different details that were secured.

Q. Well, let's confine ourselves, then, to these details. Where were the documents attached to that, under the heading of "Damage Estimates" on pages 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 pre-

(Testimony of P. E. Spalding.)

pared? A. I don't know.

Q. Do you know who in Brewer and Company would know? A. No.

Q. You have no idea as the President of C. Brewer and Company?

Mr. Vitrousek: Just a moment. This is not proper [1808] cross-examination in the first place. There is nothing in the direct examination in regard to this claim. The witness has testified he doesn't know. Therefore, there can't be a basis for a cross-examination of this witness on it. He had nothing to do with the figures. And these questions have been asked and answered several times. For all those reasons we object to them.

Mr. Rathbun: I'm startled at the statement that there's nothing in the direct about this claim. They have just put in evidence, a document here marked—

The Court: 13-U.

Mr. Rathbun: —13-U, in which it is set forth specifically. I'll read it to your Honor.

“Claim to Congress:

“The Company's enterprise has been seriously damaged through extensive expropriations by the United States Government. Many of the properties shown in the balance sheet at normal book values have had their usefulness and value either impaired or destroyed. The Company has been denied just compensation for all of its damages except in the case of growing crops and certain improvements physically expropriated. Accord-

(Testimony of P. E. Spalding.)

ingly, it has prepared and is presenting a claim for such losses to the Congress of the United States, seeking appropriate relief in the approximate amount of \$3,000,000.00.

“(4) Other Clams:

“The estimated amount to be recovered for loss of growing [1809] crops and fixed assets due to government takings is \$350,000.00. This amount includes recovery of certain direct, indirect or overhead expenses relative to the condemned fields, which expenses have been written off in the year incurred in accordance with the Company’s long established accounting procedure.”

Now, that is the claim that I am asking him questions about, pertaining to this exhibit that we offered in evidence in the plaintiff’s case, and they objected to it.

The Court: I don’t quite get the last part of your statement.

Mr. Rathbun: I offered to waive the propriety of my offering evidence and offered that in evidence, and they objected to it, that claim right there, the Government Exhibit 1 for identification. Mr. Vitousek objected to it and your Honor sustained it properly at that time.

The Court: I don’t think there is any merit to the objection as now stated, particularly in view of Exhibit 13-U, and the witness may answer your questions if he can.

Q. Will you answer the last question, please?

(Testimony of P. E. Spalding.)

Will you state to this Court that you never saw this document? A. No.

Q. Marked Government Exhibit 1 for identification, in the form in which it now appears?

A. I can't say that I have seen this one as it now appears. [1810]

Q. Or a copy of it?

A. Or a copy of it. It may have been approximately this one.

Q. Well, what was it, now, tell me? Was it one approximately like that?

A. No, approximately of this general nature.

Q. Will you state, then, do you want to state from your knowledge approximately whether or not you saw this document or a copy of it?

A. I'll state that I saw a copy or approximate copy of this.

Q. Before it was sent to Washington?

A. No, after it was sent to Washington.

Q. After it was sent to Washington?

A. Yes.

Q. You knew that it was being presented to Congress, didn't you? A. Yes.

Q. And if there was anything incorrect in this before it was presented to Congress, it was your business as the President of C. Brewer and Company, the attorney-in-fact for the Honolulu Plantation Company, as the manager-operator through C. Brewer and Company of the Honolulu Plantation Company's properties, to see that it was correct, was it not? A. No. [1811]

(Testimony of P. E. Spalding.)

Q. It was not? You didn't feel any obligation in that respect at all?

A. No, that was being carried on by the officers of the company itself.

Q. I understand you said that. But you didn't consider any obligation on the part of C. Brewer and Company, being the managing company, managing agent for the Honolulu Plantation Company, to check this and see that it was correct before it was presented to the Congress of the United States?

A. Not personally.

Q. Did anybody in C. Brewer?

A. They may have changed various portions of it.

Q. Who? A. I can't tell you.

Q. Was there anybody who took the responsibility of seeing that that was correct before it was filed and presented to Congress?

A. Mr. Schmutz, who was this—

Q. In C. Brewer and Company? A. No.

Q. Nobody? A. No.

Q. C. Brewer and Company is the largest stockholder of the Honolulu Plantation Company, are they not? A. They are. [1812]

Q. And they were at that time?

A. They were.

Q. And they own a hundred thousand shares of stock? A. They do.

Q. And that's out of a total issue of 250,000?

A. Correct.

Q. And there isn't another stockholder of over

(Testimony of P. E. Spalding.)

15,000 shares individually? A. I don't know.

Q. You don't know that even? A. No.

Q. Did Mr. Kay have anything to do with the preparation of this Government Exhibit 1 for identification?

A. He was concerned with it, of course.

Q. Well, how was he concerned? What did he do in connection with it?

A. I don't know what he did.

Q. You have no knowledge about that?

A. No.

Q. Where was the exhibit attached to this Government Exhibit No. 1 for identification as table 1, which I asked you to look at, prepared, if you know? A. I don't know.

Q. You have no knowledge? A. No.

Q. Did you ever see it?

A. I may have seen it but I have no knowledge.

Q. Well, what is your recollection?

A. Well, my recollection is that I may have seen it. I am not sure.

Q. Don't you think you would have made it your business to see? A. No.

Q. In connection with the filing of this claim?

A. No.

Q. You did not? A. No.

Q. You didn't have much interest in this claim?

A. I did have much interest but in detail of this we employed as competent men as we could to work it up.

Q. You employed Mr. Schmutz as an expert to work up a claim? A. Yes.

(Testimony of P. E. Spalding.)

Q. He did not make that statement, did he, that I asked you about on table 1?

A. I don't know.

Q. You know that, don't you?

A. No, I don't know that.

Q. Who made table No. 2?

A. I don't know. [1814]

Q. Who in C. Brewer and Company would know?

A. I don't know as anybody in C. Brewer and Company would know as to who made the specific tables and the various details.

Q. Weren't there conferences held while that claim was being prepared by representatives of C. Brewer and Company with John Courtney, the lawyer?

A. There must have been.

Q. Well, don't you know that there were?

A. Yes.

Q. Why do you say "there must have been?"

A. Well, isn't that—

Q. That's hedging the question, I think.

Q. All right. There were conferences, yes.

Q. And they were held in Honolulu, some of them, weren't they?

A. Yes.

Q. And you were present at them, weren't you?

A. I don't recall being present at any of the conferences.

Q. Who was present on behalf of C. Brewer and Company, then?

A. Well, Mr. Kay was present at some, Mr. Ewart was present at some.

(Testimony of P. E. Spalding.)

Q. Mr. Ewart is not an executive officer of C. Brewer and Company, is he? [1815]

A. He is an Assistant Secretary of C. Brewer and Company.

Q. Assistant Secretary. Beg pardon. Who else?

A. I don't know who else. The executive staff might have been there.

Q. You testified in a hearing that was had in this courtroom, or the next adjoining courtroom of Judge Metzger, did you not, a couple of years ago as a witness before a Congressional Sub-Committee pertaining to this very claim set forth in that Government Exhibit 1 for identification when John Courtney examined you, did you not? A. Yes.

Q. Didn't you at that time see this claim that I have shown you, Government's Exhibit 1 for identification? A. That was an exhibit in that.

Q. And you went over it pretty carefully before you testified with John Courtney, didn't you?

A. No.

Q. You did not? A. No.

Q. Who else besides Mr. Kay and Mr. Ewart in Brewer and Company might have had to do with those exhibits that I started to ask you about, table 1 and 2? A. Mr. Austin might have.

Q. Do you know whether he did or not?

A. No, I don't. [1816]

Q. Anybody else?

A. I don't know. The manager of the plantation, many different individuals, but just who did—

(Testimony of P. E. Spalding.)

Q. Will you tell me the ones you can remember, is what I want?

A. My answer would have to be that I do not know what was prepared by any individual in connection with that claim.

Q. I didn't ask you that. I asked you who might have done it in C. Brewer and Company, to name me the people. Now, you have given a list. Is that all of them that you can recall?

A. That's all that I can recall.

Q. Now, would your answer be the same in regard to all of the exhibits that are attached to this as tables?

A. That's right.

Q. And otherwise following the table No. 2 that I asked you about?

A. Yes.

Q. Now, C. Brewer and Company have been the manager-agent for the Honolulu Plantation Company for how long?

A. They have been the agent of Honolulu Plantation Company for, since before my time in Brewer and Company.

Q. Since before 1924 even?

A. Yes.

Q. They have full control, as such agent, of the operation [1817] of the company, the selling, the books, keeping of the books, buying necessary supplies and all those things, do they not?

A. No.

Q. What?

A. No.

Q. Which ones of those do they not have charge of?

A. They are the advisors of the plantation in

(Testimony of P. E. Spalding.)

the carrying on of its operations; as a manager employed by the company who is the manager of the plantation, and C. Brewer and Company as an agent acts as an advisor to that manager.

Q. Who does the selling?

A. Beg pardon?

Q. Who does the selling?

A. Selling of sugar?

Q. Yes. A. That's part of the agent.

Q. C. Brewer and Company?

A. Yes, the agent to sell sugar, to negotiate land leases.

Q. Just answer my question, please. Who has to do with the buying of raw sugar?

A. That has been done by C. Brewer and Company.

Q. The books are kept—

A. Let me correct that. The raw sugar that was purchased from Waimanalo was purchased by C. Brewer and Company. The raw sugar purchased from C. and H. was purchased by Honolulu [1818] Plantation Company in San Francisco.

Q. That's because they are located at Crockett, isn't it? A. No.

Q. What? Or in California?

A. C. and H. had headquarters in California and Honolulu Plantation Company's home office is California.

Q. Who are the stockholders of this C. and H. Company? A. Plantations.

Q. The plantations located in the Territory of Hawaii, isn't that right?

(Testimony of P. E. Spalding.)

A. About 28 of them, I think there are.

Q. How many of them are located in the Territory of Hawaii?

A. All of the plantations that are shareholders of Crockett are located in the Territory.

Q. That's a corporation organized in a sort of a co-operative way for the benefit of all the plantations?

A. For the benefit of the owners.

Q. Well, the owners are the plantations?

A. Not all of the plantations own stock in C. and H.

Q. The plantations that do own stock are all in the Territory of Hawaii?

A. That's right.

Q. And Honolulu Plantation is one of them, isn't it?

A. No. [1819]

Q. Who does own the stock as far as Honolulu interest is concerned?

A. In C. and H.?

Q. Brewer and Company?

A. No. There is no—

Q. Brewer and Company owns no stock?

A. In C. and H.?

Q. Yes.

A. No stock.

Q. Honolulu Plantation owns none?

A. None.

Q. Does Oahu Sugar own any?

A. Oahu Sugar, yes.

Q. Ewa?

A. Ewa.

Q. What other plantations on the Island of Oahu?

A. Wailua, Kahuku, Waianae.

Q. Any others?

(Testimony of P. E. Spalding.)

A. That own stock in C. and H., no. Waimanalo owns no stock.

Q. Any of the other islands, what companies on the other islands own stock in it?

A. Is this about C. and H.?

Q. Yes.

A. Well, now, if I can get a list of the plantations I [1820] can give them to you.

Q. Well, I haven't got a list of the plantations. I'm asking for your recollection.

A. My recollection, out in Maui there's Pioneer, Hawaiian Commercial, Maui Agricultural, and Wailuku that own stock in C. and H. On the Island of Hawaii, Onomea, Pepeekeo Sugar Company, Laupahoe, Kaiwiki, Hamakua, Kohala, Hawaiian Agricultural Company, Olaa, Waiakea. And on Kauai there's Kekaha, Waimea, McBryde, Koloat, Grove Farm in Lihue, that own stock in C. and H.

Q. Is that all that you can recollect?

A. That's all that I can recollect.

Q. What is the purpose—when was this C. and H.—what is the proper name?

A. California and Hawaiian Sugar Refining Corporation.

Q. When was it incorporated?

A. I think it was 1903 or 4. I don't know just when.

Q. And what was the purpose of its coming into existence, if you know?

(Testimony of P. E. Spalding.)

A. To refine raw sugar of the owners and market it.

Q. Refine raw sugar of the owners who grew sugar in the Territory of Hawaii?

A. And to market the refined sugar on the mainland.

Q. Was there any other refiner of any of these companies who were stockholders who refined raw sugar? Was there any of [1821] them that refined raw sugar at the time this company came in existence?

A. Of these shareholders?

Q. Yes.

A. None of them refined raw sugar.

Q. After that the Honolulu Plantation Company put up a plant and refined sugar?

A. No, I think Honolulu did it before.

Q. All right. A. About the same time.

Q. Honolulu Plantation is the only refinery in the Territory of Hawaii?

A. They are the only refinery. Maui Agricultural Company has produced a small quantity through a suchar process.

Q. What proportion of the refining is done? Would that be inconsequential?

A. In the Territory?

Q. The one that you named.

The Court: Maui?

A. Maui Agricultural? They produced around five, six, seven thousand tons a year.

Q. They get this sugar from the island on which they are located?

A. Yes.

(Testimony of P. E. Spalding.)

Q. They don't refine any sugar from the Island of Oahu? [1822] Now, this California and Hawaiian Sugar Company, Refining Company—strike that. Is there any reason why Honolulu Plantation Company could not obtain raw sugar from these other plantations on the Island of Oahu for the purpose of refining it in their mill at Aiea?

A. Well, they could probably obtain sugar to a limited extent, as long as that sugar was sold within the Territory here and not in competition with the owners of the sugar. Their refined sugar is on the mainland.

Q. What do you mean by "limited extent?"

A. To whatever they were able to market in the Territory, what they needed.

Q. In other words, did Honolulu Plantation compete with the California and Hawaiian Sugar Refining Company?

A. Before the war it did.

Q. During the war?

A. No. Couldn't ship any sugar out of here during the war.

Q. They didn't compete?

A. Not during the war.

Q. Now, the sale that's been put through that you mentioned, the sale was to Oahu Sugar Company, was it not, on the face of it?

A. That's correct.

Q. And one of the terms of the sale, is it not, is that [1823] this California and Hawaiian Sugar Refining Company will take over and buy the mill of the Honolulu Plantation Company?

(Testimony of P. E. Spalding.)

A. That's the understanding, that they will buy the refinery. That's my understanding, that they are buying the refinery site and the refinery to operate as a refinery.

Q. Part of the sales agreement, isn't it?

A. Insofar as Honolulu Plantation is concerned, Honolulu Plantation only had a direct dealing with the Oahu Sugar Company. But Oahu Sugar Company's arrangement with C. and H., I don't suppose I could say what that it.

Q. Well, it's been in the papers?

A. Well, whatever is in the papers is probably correct.

Q. Well, the papers stated that part of the deal was that California and Hawaiian Sugar Refining Company was to take over the mill when there was a definite amount allocated for that purpose, \$1,250,000, if I recall the figures correctly.

A. That's correct.

Q. Now, what was the purpose of the California and Hawaiian Sugar Refining Company in buying this mill? A. To produce refined sugar.

Q. Where will they get this sugar from, on these islands, Territory of Hawaii? A. Yes.

Q. They expect to do it at a profit, not at a loss, don't they? [1824] A. They hope to.

Q. Has that been a profitable enterprise, the California and Hawaiian Sugar Refining Company?

A. It's a cooperative and it returns to the plantations whatever the net results are.

Q. They aim to have something to return to them, don't they, as stockholders?

(Testimony of P. E. Spalding.)

A. Yes, they try to, but their return is on the sugar.

Q. Has it been a successfully operated company? A. I believe so.

Q. Now, this exhibit that's been marked in evidence as Exhibit 13-U, I notice under or on page 18 and 19 of that document, under a heading "Permanent Improvements and Property Accounts, December 31, 1944," two items at the top. One is real estate, fee simple, \$182,214.85. And under that is real estate, leasehold, \$267,864.78. Was that ever carried previous to 1944 on this annual report in that manner?

A. I assume that it was. If I can see some of the other exhibits, I'll soon tell you.

Q. I will hand you Exhibit 13-S and 13-T, which are for the years '42 and '43.

In 1943 they have real estate, fee and leasehold combined.

Q. They have it combined?

A. As one item. [1825]

Q. That was the practice in all of the reports that are in evidence in this case, was it not?

A. Yes, in '42 it shows the same thing.

Q. Isn't that the same in all of these exhibits, without showing them to you? Isn't '44 the first time that they split them that way between fee and leasehold?

A. That apparently is the first time, yes.

Q. Well, I don't want to confuse you. If you want to look at those documents, you can.

(Testimony of P. E. Spalding.)

A. If you will show me that they are that way, I am willing to accept it.

Q. I am asking you a question and you will have to look at them yourself.

A. Let me look at them. '39 is the same way.

Q. I will have them in order. Just a minute. Now, there, they are there, all of them. Now, what do you say, whether or not that practice was ever followed before 1944?

A. That is not in the 25 reports at all. Apparently they are all carried, they were not separated before, the fee and leasehold were not separated before.

The Court: It has become necessary and advisable to take a recess for the day. We will adjourn for the day and if you are all right, we will go ahead tomorrow morning at nine o'clock.

Mr. Vitousek: Yes.

The Court: All right.

(The Court adjourned at 11:53 o'clock, a.m.)

Honolulu, T. H., January 9, 1947

The Clerk: Civil No. 514, United States of America versus 257.654 acres of land, and Civil Nos. 521, 525, 527, 529, 532, 533, 535, 536, 540, 544, 548 and 684, for further trial.

The Court: Are the parties ready?

Mr. Vitousek: Ready.

PHILIP EDMUND SPALDING,

a witness in behalf of the Defendants, having previously been sworn, resumed and testified further as follows:

Cross-Examination—(Continued)

The Court: Mr. Spalding, you are mindful of the fact that you are still under oath?

The Witness: Yes, sir.

The Court: You may proceed.

By Mr. Rathbun:

Q. Mr. Spalding, showing you Government Exhibit 1 for identification, and calling your attention to a list of stockholders of Honolulu Plantation Company as of December 31, '44, did you ever see that? A. I don't recall.

Q. Will you look at it and see whether it is correct? You have knowledge of the stockholders, don't you? [1827]

A. Well, I have no knowledge of their holdings.

Q. You have no knowledge of their holdings? You have knowledge of the Brewer and Company holdings, don't you? A. Yes.

Q. Will you look on that statement to see if they are correctly reflected?

A. Yes, that's Brewer and Company holdings.

Mr. Vitousek: What was the answer?

A. That's the Brewer and Company holding.

Q. How much?

A. A hundred thousand nine hundred and sixty-two shares.

Q. What is the total capitalization of the Hon-

(Testimony of P. E. Spalding.)

Honolulu Plantation? A. Five million dollars.

Q. How many shares of stock?

A. Two hundred fifty thousand.

Q. Two hundred fifty thousand shares?

A. Yes.

Q. Is Matson Navigation Company interested as a stockholder?

A. Not that I know of. They would be shown if they were.

Q. You don't know?

A. No, I don't think they are. As a matter of fact, I'm pretty sure they are not.

Q. What is the Matson Securities Company, do you know?

A. Oh, I think the Matson Securities Company is the— [1828] represents the holdings and ownership of Mrs. Roth.

Q. Mrs. Who? A. Roth.

Q. Who is Mrs. Roth?

A. Mrs. William Roth.

Q. Is she connected with the Matson Navigation Company?

A. Her husband is the President or Chairman of the Board, I think.

Q. Now, C. Brewer and Company, of which you are President, collected commissions from the Honolulu Plantation Company for their services as agent, did they not? A. Yes.

Q. Commissions for the year 1944, do you know how much they were for that year?

A. No, I do not.

(Testimony of P. E. Spalding.)

Q. What would you say that the \$114,809.86 as shown on the blue sheet, first page of the attached sheet to the Exhibit 13-U, that that properly reflects the amount of commissions received by Brewer and Company for that year?

A. It says commissions to Honolulu agents, \$114,809.86. That's—

Q. That's Brewer and Company?

A. That's Brewer and Company. We are the Honolulu agent.

Q. Did that include commissions upon the amounts paid by the U. S. Department of Agriculture as compliance payments? [1829]

A. Certainly.

Q. Well, yes is your answer? A. Yes.

Q. Do you know what the compliance payments for the year '44 were? A. No, I do not.

Q. Have you any idea as president of the company?

A. No. The compliance payments are payments based on the sugar produced.

Q. I know what they are. I asked you if you have any knowledge of the amount of commission?

A. No.

Q. Or the amount that was paid?

A. No, I do not. It was all incorporated in that one figure.

Q. But they did collect a commission on it?

A. Yes.

Q. C. Brewer and Company? A. Yes.

Q. Now, in testifying that the taking of lands

(Testimony of P. E. Spalding.)

involved in these cases that are being tried here had an effect upon the value of the remaining properties of the Honolulu Plantation Company, you had in mind the leases of the company, didn't you?

A. I had in mind the whole enterprise.

Q. Well, you had in mind the leases of the company? [1830]

A. As a part of the whole operation, yes.

Q. Then you did have those in mind?

A. Yes.

Q. The Damon leases, you are familiar with those, weren't you? A. I negotiated them.

Q. And you know the acres that were involved at the time of these takings?

A. The acreage in these particular—

Q. In the Damon leases?

A. That was taken at that time. I don't know. I'd have to refresh my memory.

Q. Will you refresh your memory, please?

A. If there is some document here.

The Court: Shown on Exhibit 12.

The Witness: Exhibit 12?

The Clerk: Honolulu Plantation Exhibit 12.

A. 595.01 acres in this list.

Q. You say that that's all the acres that were involved that were leased from the Damon Estate that were taken in the proceedings on trial?

A. Well, I'm taking this exhibit.

Q. I don't know what you are taking. I'm asking you, as the President of C. Brewer and Company, the managing agent.

(Testimony of P. E. Spalding.)

A. If this is correct, this is on the statement.

Q. Well, I don't know whether it's correct.

A. Well, I can't state from my own memory the acreage.

Q. You don't know?

A. I don't know other than approximately.

Q. You negotiated all these leases?

A. I negotiated the leases.

Q. You are familiar with the fact that you are making a claim for the deterioration on the balance of property less than the amount taken in these 21 cases?

A. Yes.

Q. Still you don't know the acreage?

A. I don't know.

Q. On the Damon Estate?

A. Not the exact acreage.

Q. Do you know approximately?

A. Yes, approximately 600 acres.

Q. And that's all, no more?

A. That's what, that's my understanding, approximately 600 acres.

Q. Will you look at the document, Exhibit 9-K, and tell me how much of the property involved in 9-K was taken in these proceedings involved in this trial?

A. You want me to figure this out with pencil and paper?

Q. I'd like to have you give me your knowledge about it. That's what I want. [1832]

A. The total area in this lease is 1,451.56 acres. All I can assume is that in this taking this exhibit

(Testimony of P. E. Spalding.)

correctly determines the total amount of the takings that are in this trial, some 600 acres.

The Court: Exhibit 12?

A. Exhibit 12 shows 595.01, which I am perfectly willing to take as correct.

Q. 595.01 is the total amount of the acreage that was taken from the property covered by that lease in these cases now on trial, is that right?

A. Yes.

Q. Are you familiar with the signature of Mr. C. F. Jacobson, the President of the Honolulu Plantation Company? A. Yes.

Q. Will you look at the signature on page 12 of Government Exhibit No. 1 and tell me whether or not that is his signature?

A. Yes, that is, I would identify it as his signature.

Q. Who is Mr. Charles M. Merriam in C. Brewer and Company?

A. Mr. Merriam was the manager of the land department. He was retired in the end of '43 due to ill health.

Q. He had full charge of the leases?

A. Well, he didn't negotiate leases. He didn't have authority to negotiate leases. [1833]

Q. What were his duties?

A. He was in charge of the land department.

Q. Well, what do you mean by that?

A. He had charge of all the documents and in the calculation of the rentals to be paid and in the paying of the rentals and in the general oversight of the lands.

(Testimony of P. E. Spalding.)

Q. What do you mean by "general oversight?"

A. Just what I said.

Q. You can't explain it any further than that what an oversight mean in his duties?

A. Other than his duties were to examine the documents, to keep them properly corrected, to notify us when the leases were due to expire, and to bring to the attention of the officers the necessity for renegotiation of leases or offers of sale of property or purchase, carry out the details of any transactions that were negotiated by the officers.

Q. And did he operate under your supervision and direction? A. Yes.

Q. He was authorized to write letters pertaining to the real estate and the leases that the company owned or held?

A. Any ordinary letters, ordinary business transactions.

Q. Did you look at all the letters that he wrote?

A. No.

Q. Now, in connection with your statement that the taking [1834] of the land involved in these cases now on trial had an effect upon the remaining property of the Honolulu Plantation Company, did you assume that as to this 595 acres that you have just testified about it was a piece of property upon which the Honolulu Plantation Company had a lease in 1944? A. Yes.

Q. What did you base that upon?

A. Based that upon an offer in writing made by the Trustees of the Damon Estate to Honolulu Plantation, which I accepted in writing.

(Testimony of P. E. Spalding.)

Q. You mean you accepted in writing? When you say that you refer to the letter that you wrote to the Trustees under the Will of Samuel Mills Damon, deceased, under date of October 21, 1940, which is attached to Honolulu Plantation Exhibit 9-K in this case, is that right?

A. That letter and their offer.

Q. Yes. Which is also attached?

A. Which is also attached.

Q. Under date of? A. October 18.

Q. October 18, 1940? That's what you mean by your statement? A. That's what I mean.

Q. You accepted it?

A. That, I accepted it. [1835]

Q. Is there any other correspondence except those two letters that took place pertaining to this lease?

A. Yes, about, I think it was in the spring of the following year we notified them that we have been spending considerable monies in the improvement of these properties and would ask that they proceed with the preparation of the leased document.

Q. Have you those letters?

A. I haven't them with me, no.

Q. What?

A. I haven't them with me. They are certainly in our files.

Q. Well, you haven't them with you?

A. No. My recollection is that it was in May

(Testimony of P. E. Spalding.)

of the following year. We were spending a great deal of money in replanting the whole area.

Q. I didn't ask you that, did I? Please, sir.

A. Well, I didn't know.

Q. Well, you know very well that I didn't, don't you? I asked you about a letter.

A. I was merely explaining the reason why we had written the letter.

Q. Well, I wasn't asking the reason. You have counsel here that can ask you that.

A. All right. [1836]

Q. On this letter of October 21, 1940, that you wrote to the Trustees of the Damon Estate, you state that we will prepare a tentative form of lease for submission to you. Did you prepare such a lease? A. Yes.

Q. Will you look at that document and see whether or not that is the lease that was tendered by the Honolulu Plantation Company pursuant to that letter? (Showing a document to the witness)

A. That is a preliminary draft of a lease.

Q. Well, did you ever submit any other?

A. No.

Q. All right, then that is the only thing that you ever submitted under that clause of that letter, is it? A. Yes.

Q. And that's it, is it? Look at it carefully.

A. I don't recognize these notations that are—

Q. Well, I didn't ask anything about the notations. Just the lease itself. Disregard the notations that are pinned on there?

(Testimony of P. E. Spalding.)

A. Yes, that's the lease.

Mr. Vitousek: May I see it? I don't think these notations should be torn off at this time. I'd like to see it as it was.

Mr. Rathbun: I know you'd like to but these happen to be personal notations of ours. I asked him about the document only, [1837] that I asked him about.

Q. In connection with that document that I have just shown you, you wrote the letter that is attached to it?

Mr. Vitousek: When documents are offered, the attorney has a right to look at them. I have previously shown counsel all the documents that I offered.

Mr. Rathbun: If you are offering them. I have a right to identify documents prepared for my office.

Mr. Vitousek: Well, I have never seen it handled that way.

Mr. Rathbun: Well, you missed a lot in life.

Mr. Vitousek: Counsel has a right to look at documents before they are presented to the witness.

Mr. Rathbun: When I get through identifying this letter. You're wrong on this position.

Mr. Vitousek: I'm not wrong in my position.

Mr. Rathbun: Will you let me finish, please.

The Court: Just a minute. There's no need for this cross talk.

(Testimony of P. E. Spalding.)

Mr. Vitousek: I request that the document be shown to opposing counsel.

The Court: I haven't any power to require its being shown until it is offered in evidence. Proceed.

Q. In independence of the pencil notations which are upon the letter which I now show you attached to the lease that [1838] you have just identified, a copy of a proposed lease, is a letter written by Charles H. Merriam, under date of November 29, 1940, to the Trustees under the Will of Samuel Mills Damon, deceased, is there not?

A. Yes.

Q. Disregarding the memorandum or the memoranda that are attached to it in typewriting on the green and yellow slips, and disregarding the pencil notes, that's just the way it was sent, wasn't it, to the Trustees of the Damon Estate?

A. Yes.

Q. You may look at those if you care to. I haven't any objection to it. But they are no part of it. It wasn't anything said by you, that green slip?

A. No.

Q. That green and yellow slip attached?

A. No.

Q. Put on by someone else.

The Court: You will have to speak louder, Mr. Spalding. Your voice doesn't carry the answer. Your answer to the last two questions was No?

A. No. Yes.

Mr. Rathbun: I ask that the letter of November

(Testimony of P. E. Spalding.)

29, 1940, with the limitations which I stated in regard to the memoranda attached to it, and the form of proposed lease attached to it be marked as Government's Exhibit for identification 2 and 3 [1839] respectively at this time.

Mr. Vitousek: Now may I see it?

The Court: You may now see it. (Document referred to is handed to Mr. Vitousek)

Mr. Vitousek: The request is that they be marked for identification?

The Court: That is right; excluding the attached yellow and blue slip they may be marked for identification.

Mr. Rathbun: And the pencil notations.

The Court: And excluding the pencil notations. As what, Mr. Clerk?

The Clerk: The letter is U. S. Exhibit No. 2 for identification and the proposed form of the lease is U. S. Exhibit No. 3 for identification.

(The documents referred to were marked
"U. S. Exhibit No. 2 for identification" and
"U. S. Exhibit No. 3 for identification.")

By Mr. Rathbun:

Q. Now, this Mr. Charles H. Merriam that signed this letter marked Government's Exhibit No. 2 for identification is the same Mr. Merriam that you have just been testifying about?

A. Yes.

Q. And did you see that lease that is attached to that letter previous to the time that it was sent?

(Testimony of P. E. Spalding.)

A. I'm sure I did, but I can't recollect. [1840]

Q. And you had knowledge of the letter that accompanied it, did you? A. Yes.

Q. And you authorized, you knew that Mr. Merriam wrote that letter, did you not?

A. Yes.

Q. I show you a carbon copy of a letter dated November 29, 1940, written to the Trustees under the Will of Samuel Mills Damon, deceased, by C. Brewer and Company, by Mr. Charles H. Merriam, and ask you whether or not you had knowledge of that letter? (Showing a letter to the witness)

A. That is the same letter that is attached to this lease. That is a copy of it.

Q. Maybe you're right. That's right. I show you a letter dated May 5, 1941, written to the Trustees under the Will of Samuel Mills Damon, deceased, by C. Brewer and Company, by Mr. H. T. Kay, Vice-President, and ask you whether or not you had knowledge of that letter? (Showing a letter to the witness)

A. Yes, that's the letter to which I just referred in my testimony.

Q. When did you refer to that?

A. You asked me if there was additional correspondence, and I referred to a letter written some six months.

Q. That's the correct copy of the letter, is it?

A. To the best of my knowledge, it is. [1841]

(Testimony of P. E. Spalding.)

Q. You had knowledge of it when it was written?

A. But I can't remember—I would say it is a correct copy.

Q. Well, I'm showing you the letter now and asking you whether or not that's a correct copy of that letter that was sent?

A. To the best of my knowledge, it is.

Mr. Rathbun: I ask that that letter of May 5, 1941, a copy of it, be marked Government's Exhibit No. 4 for identification. (Showing letter to Mr. Vitousek)

The Court: It may be so marked.

(The letter referred to was marked "U. S. Exhibit No. 4 for identification.")

Q. I show you another letter, dated May 12, 1941, written by—this is a copy, carbon copy—with J. W. initials at the bottom, and underneath it typewritten J. Waterhouse, a trustee, directed to C. Brewer and Company, attention Mr. H. T. Kay, Vice-President, and ask you whether or not you had knowledge of that letter?

A. Yes, I remember that.

Q. That's a correct copy of the letter that purports to be a copy of? A. Yes.

Mr. Rathbun: I ask that this letter, excluding the blue slip which is attached to it, be marked Government's Exhibit [1842] No. 5 for identification. (Handing letter to Mr. Vitousek)

The Court: It may be so marked.

(Testimony of P. E. Spalding.)

(The letter referred to was marked "U. S. Exhibit No. 5 for identification.")

Q. I show you a carbon copy of a letter dated August 15, 1941, written to C. Brewer and Company, Agent, Honolulu Plantation Company, by John Waterhouse, E. H. Wodehouse, and John E. Russell, Trustees of the Estate of Samuel M. Damon, and ask you if you had knowledge of that letter, the original?

A. Yes, I have knowledge of this letter.

Q. And that letter, the original of it is in the possession of C. Brewer and Company, is it?

A. It should be.

Mr. Rathbun: I ask that this letter be marked for identification, Government's Exhibit No. 6, disregarding the slip attached to it on the yellow paper in typewriting. (Handing letter to Mr. Vitousek)

The Court: It may be so marked.

The Clerk: U. S. Exhibit 6 for identification.

(The letter referred to was marked "U. S. Exhibit No. 6 for identification.")

Q. I show you a letter, carbon copy of a letter written by Honolulu Plantation Company by H. T. Kay, Vice-President, dated December 16, 1941, addressed to S. M. Damon Estate, and ask you whether or not you are familiar with that letter? [1843]

A. Yes, I am familiar with it.

Q. That's a correct copy of a letter that was written to the Damon Estate by Honolulu Plantation Company through C. Brewer and Company?

(Testimony of P. E. Spalding.)

A. Yes.

Q. On that date? A. Yes.

Mr. Rathbun: I ask that that be marked for identification as Government's Exhibit 7.

(The letter referred to was marked "U. S. Exhibit No. 7 for identification.")

Q. I show you a letter dated November 11, 1943, written by C. Brewer and Company by Charles H. Merriam, Manager, Land Department, to the Public Works Officer, Commandant, Navy Number 128, care of Fleet Post Office, San Francisco, California, and ask you whether or not you had knowledge of that letter? A. No.

Q. Never had any knowledge of it?

A. I didn't know that was written.

Q. Did you ever know that it had been written?

A. Yes, I learned about it a few months ago.

Q. You learned about it a few months ago?

A. I didn't know anything about it being written.

Q. It's signed by the same Charles H. Merriam that you have testified about here? [1844]

A. Yes.

Mr. Rathbun: I ask that that letter be marked for identification, Government's Exhibit No.—

The Clerk: Eight.

The Court: It may be so marked.

(The letter referred to was marked "U. S. Exhibit No. 8 for identification.")

Q. I show you a letter dated September 16, 1943, written by C. Brewer and Company, by Char-

(Testimony of P. E. Spalding.)

les H. Merriam, Manager, Land Department, to the Commandant, Fourteenth Naval District, Navy Number 128, care of Fleet Post Office, San Francisco, California, and ask you whether you had knowledge of that letter?

A. No, I don't. I didn't know anything about that letter.

Q. Did you ever have knowledge of it previous to today? A. Yes.

Q. When? A. In the last few months.

Q. Where did you find the letter in the last few months?

A. It must have been in our files.

Q. Well, is that your knowledge about it?

A. That's my knowledge.

Q. How did you happen to get it? How did it happen to be called to your attention?

A. Well, now, I don't know why or how it was called to my attention but it was. [1845]

Q. You haven't any recollection about that at all?

A. About why it was called to my attention?

Q. Yes.

A. Unless it was in connection with these proceedings.

Q. Well, I'm asking for your recollection.

A. I have no recollection.

Q. No recollection whatever as to how you happened to have that letter called to your attention?

A. That's the best of my recollection what I have said.

(Testimony of P. E. Spalding.)

Q. You just have no recollection?

A. No recollection it was called to my attention.

Q. And how was the other letter, marked—where is this marked?

The Clerk: Which one is that?

Mr. Rathbun: It should be 7 shouldn't it?

The Court: That's December 16, 1940?

Mr. Rathbun: September 16.

The Clerk: Did you get that one in yet? Eight is the last one.

Mr. Rathbun: They are all in that I have handed to you.

The Clerk: You haven't offered it yet.

Mr. Rathbun: But you had the other one.

The Clerk: Eight.

Q. Now, the letter of September 16 which I am now showing [1846] you, which isn't yet marked, that's the one that you say you can't have any recollection as to how it was called to your attention? You do not have any such recollection at this time?

A. It's the same as the other one that was called to my attention some time in the last few months.

Q. Now, you mean the same as the other one, you are referring to U. S. Exhibit No. 8 for identification? A. Yes.

Q. Dated November 11, '43? A. Yes.

Q. And as to neither one of those can you re-

(Testimony of P. E. Spalding.)

member at all how those letters happened to be called to your attention?

A. Other than what I have testified, that they were called to my attention some time in the last few months.

Q. But for the occasion, you don't remember and haven't any recollection at all?

A. Other than it was in connection with these proceedings.

Q. Well, is that when it was called to your attention?

A. That's when it was called to my attention.

Q. That's your recollection now?

A. Yes.

Q. What were you needing these letters for in connection with these proceedings?

A. The attorneys, in preparing for the case, apparently dug them up. [1847]

Q. Well, that was your recollection?

A. I don't know anything about them other than what they were called to my attention.

Q. Who called your attention to them?

A. I can't recollect who that was.

Q. You can't even recollect that? A. No.

Mr. Rathbun: I'd like to have your Honor read those letters. (Handing two letters to the Court)

The Court: One of them has not yet been marked.

Mr. Rathbun: I now ask that the letter of September 16, 1943, written to the Commandant

(Testimony of P. E. Spalding.)

by Charles H. Merriam, be marked as Government's Exhibit.

The Clerk: This will be 9.

Mr. Rathbun: Nine for identification.

The Court: It may be so marked.

(The letter referred to was marked "U. S. Exhibit 9 for identification.")

Q. Do you know whether or not, Mr. Spalding, these documents marked Government's Exhibits 8 and 9 for identification were ever called to the attention of the Congressional Committee before whom you were presenting a claim? A. No.

Q. On account of these takings? A. No.

Q. You don't know anything about that?

A. No.

Q. Did you suggest to anybody that those ought to be called to their attention?

A. I knew nothing about those letters.

Q. You said you knew about them.

A. Some two or three months ago.

Q. After the hearings?

A. Long after the hearings, long after they were written.

Q. Isn't that proceeding still pending?

A. In Congress?

Q. Yes.

A. As I understand it, there was a bill introduced in the last Congress which was passed by the House, went to the Senate and the Congress expired, so there is no act before the Congress.

Q. Isn't it the intention of the company to

(Testimony of P. E. Spalding.)

present that claim to Congress again in the new Congress? Haven't you got a lawyer in Washington that is supposed to do that for you?

A. Yes, sir.

Q. Have you told him anything about these letters yet?

A. He knows all about the letters.

Q. When did he learn about them?

A. I don't know, but it must have been—

Q. How do you know he learned about them?

A. It must have been subsequent to that proceeding here.

Q. Well, what is your recollection about it?

A. Oh, I can't testify for him as to what he knew and what he didn't know.

Q. You can testify as to what you know he should know, can't you?

A. No, no, I can not.

Mr. Vitousek: He can't testify as to what a man should know. He can testify as to what he knows and what he has information on. We object to the question.

The Court: Go ahead. There were three people talking at once that time.

Q. Did you or anyone else, Mr. Spalding, suggest to your attorney that these letters, marked Government Exhibits 8 and 9, should be called to the attention of the Congressional Committee to whom you were presenting a bill and to whom you proposed to tender one in connection when the new Congress convenes?

A. I did not.

(Testimony of P. E. Spalding.)

Q. Do you know anybody else in C. Brewer and Company that did? A. No.

Q. You'd be apt to have knowledge of it after your attention was called to it if that had been done? [1850] A. Yes.

Q. After you saw these letters?

A. After I saw the letters I probably would have.

Mr. Rathbun: Now, as to the letters here which are originals, if your Honor please, may it be understood that we may substitute copies for them when we can have them prepared? Some of these don't belong to us.

The Court: Yes, copies may be substituted. We have arrived at the time for our first recess and it will be well to take it at this time.

(A short recess was taken at 10:05 a.m.)

After Recess

By Mr. Rathbun:

Q. I show you, Mr. Spalding, a letter dated January 3, 1943—also some pencil notations on this—written to Vice-Admiral Robert Lee Ghormley, U. S. Navy, Commandant, Fourteenth Naval District, Pearl Harbor, Oahu, Territory of Hawaii, by Honolulu Plantation Company, by you, its attorney-in-fact, and ask you whether or not you wrote that letter with the documents that are attached to it? (Handing a document to the witness)

A. I remember the letter very distinctly.

(Testimony of P. E. Spalding.)

Q. Well, that's fine, but did you write it?

A. And the documents which I had prepared.

Q. You wrote the letter, did you? [1851]

A. Yes, I had it written.

Q. Well, what do you mean you had it written, now?

A. Well, I don't—I use a stenographer and typewriters.

Q. You dictated and signed it?

A. I signed it.

Mr. Rathbun: I ask that that be marked Government's Exhibit whatever the next one is.

The Court: Ten.

The Clerk: U. S. Exhibit No. 10.

(The document referred to was marked "U. S. Exhibit No. 10 for identification.")

The Court: The pencil notations you have referred to, you have erased?

Mr. Rathbun: Yes, I have erased those.

Mr. Vitousek: As I understand, it includes the attached exhibits.

The Court: That's my understanding.

Mr. Rathbun: Yes, with the documents attached.

The Court: The letter plus the attached documents.

Q. I show you a carbon copy of a letter dated January 12, 1944, addressed to C. Brewer and Company, purporting to have been written by Robert L. Ghormley, Vice Admiral, U. S. Navy, Commandant, Fourteenth Naval District, on that

(Testimony of P. E. Spalding.)

date of January 12, 1944, and ask you whether or not C. Brewer and Company received the original of that letter? [1852]

A. Yes, they received the original of that letter.

Mr. Rathbun: I ask that this be marked for identification, Government Exhibit No. 11.

The Court: It may be marked for identification.

(The letter referred to was marked "U. S. Exhibit No. 11 for identification.")

Q. Now, again showing you Government Exhibit No. 1 for identification, will you tell me whether or not you have in your possession a copy of that document, meaning by you, yourself or C. Brewer and Company?

A. Well, I can't say that we have a copy of this document as it is prepared.

Q. Have you a copy of the document that was filed with Congress, with the Congressional Committee of Congress pertaining to your claim?

A. I believe we have.

Q. Well, I will ask you to produce it.

A. Now?

Q. If you can send for it, I'd like to have it produced before you are through with your cross-examination.

The Court: Can you arrange to send for it?

Mr. Vitousek: If the Court please, I don't know what the question was.

The Court: He asked him if he could send for it, he asked him to produce it while he was still under cross-examination [1853] and asked if he

(Testimony of P. E. Spalding.)

could send for it, and the witness said he could. Can you arrange to send for it?

Mr. Vitousek: Well, if the Court please, may I make a statement to counsel? I have a copy but I have not yet been able to find out from anyone if it is the copy that was filed. Now, I don't even know whether it compares with this one or not. I have a copy myself. I took it. I have it in my files here.

The Court: In other words, you have in your possession a copy that Mr. Spalding would send for?

Mr. Vitousek: I don't know. I presume so. I didn't get it from Mr. Spalding.

The Court: Supposing you show it to him and see if that is the one that he would send for?

Mr. Vitousek: I am informed by Mr. Kay that this one here is a different one from what they have in the office. This is the one I have in my files, marked "H. T. Kay." He informs me this is the one that was in the office, which Mr. Kay is producing.

The Court: Will you show it to him?

Mr. Vitousek: I don't know anything about it.

The Court: Show it to Mr. Spalding and let him decide which one he would send for, if he can.

The Witness: I would send down for one that looks like something like this. Whether it would be the same one or not, [1854] I don't know.

Mr. Rathbun: Well, I'd say it's about time you

(Testimony of P. E. Spalding.)

were finding out. You knew something about the copy that you filed with Congress.

The Witness: The company filed with Congress, not I. This one looks much the same. (Witness has in his hands two documents, one, Government Exhibit 1 for identification, and another looking similar to it.) (Mr. Vitousek is holding a third document, similar looking to the other two.) I think this one is like I would send for. It looks much the same. That's as near as I can come to identifying it.

The Court: "This one" means a document that appears similar, exteriorly at least, to Exhibit 1 for identification.

Q. Then would you say that Government's Exhibit 1 for identification is the document that was filed with the Committee of Congress pertaining to the claim of Honolulu Plantation Company, a copy of it?

A. No, I can't say that. I had nothing to do with the filing of it. The document was prepared in California. It was filed there, and the copies were sent to us. Whether there were amendments or changes——

Q. The copies that were sent to you as President of Brewer and Company, the owner of a hundred thousand shares of stock, you looked at it carefully before it was filed in Congress, did you not? [1855]

A. No, sir, we employed competent men to file

(Testimony of P. E. Spalding.)

this document, men in whom we had confidence. They prepared it and we accepted it there.

Q. Were there exhibits attached to Government Exhibit No. 1 by somebody that you hired or by somebody in your office?

A. No, I can't tell you.

The Court: Just a minute. You will have to stop when there is an objection.

Mr. Vitousek: The Court will recall there was about an hour and one-half on the same thing yesterday. Mr. Spalding stated that he didn't know. Mr. Spalding said possibly some of these were prepared in the office. He didn't know but gave possible names. Now we are going to go through all that again. We object to the question. It's already been answered several times.

Mr. Rathbun: It hasn't been asked and answered in the sense that I am going into it now. We have a copy in front of him. The first time we had it. The mystery of this, saying that that wasn't filed, what is the mystery about this? That's what I'd like to know. Why don't they give us what was filed? And if this is not it, then we'll know.

The Court: There certainly has been mystery throughout the case about what was actually filed with Congress.

Mr. Rathbun: Are they ashamed of their claim or what is it? But there shouldn't be any mystery about it in this [1856] Court.

Mr. Vitousek: If the Court please, counsel has a chance to talk about a mystery and being ashamed.

(Testimony of P. E. Spalding.)

If this claim is in Congress, the Government has the right to see it the same as everyone else. They were present at the hearing. I stated to the Court that we don't know what changes were made because it was handled by Mr. Courtney. I wrote for them. I haven't got them yet. But in our theory of this case, this claim is immaterial before this Court. That was a claim before Congress and we intend to, as I stated at the beginning, to object to it. It isn't up to us to prove their claim. They had a means of getting it from the Committee where it was filed, get it certified, and it's been a long time that this case has been set for trial and they could have done so.

Mr. Rathbun: He said we were present at a hearing. I don't know what hearing.

Mr. Vitousek: The Committee that was out here.

Mr. Rathbun: Who was present?

Mr. Vitousek: You.

Mr. Rathbun: How long was I there?

Mr. Vitousek: I don't know.

Mr. Rathbun: Five minutes. If you are going to make a statement like that, I had nothing to do with it and you know it.

Mr. Vitousek: Neither did I. [1857]

The Court: Proceed.

Q. Again I will ask you whether or not this document, Government Exhibit No. 1 for identification, is a copy of the document that was filed with the Congressional Committee of the Congress of

(Testimony of P. E. Spalding.)

the United States in connection with the claim of Honolulu Plantation Company?

Mr. Vitousek: If the Court please, we object. It's already been asked and answered several times and asked and answered this morning.

The Court: Overruled.

A. Well, again I reply that I do not know whether this is the identical document, identical with the document that was filed in Congress.

Q. As President of C. Brewer and Company can you tell me anyone in C. Brewer and Company here among the officers or employees that might be able to tell whether or not this document, Government Exhibit 1 for identification, is a copy of the document that was filed in Congress?

A. I can not.

Q. You haven't the slightest knowledge about that?

A. This document was filed in Congress by Mr. Courtney.

Q. Mr. Courtney is a lawyer, isn't he?

A. He is.

Q. Did Mr. Courtney make up those exhibits attached here from the books of the Honolulu Plantation Company? [1858]

A. I certainly don't think he did.

Q. You know he didn't don't you?

A. I don't know.

Q. They were made by the Honolulu Plantation Company's office here, through C. Brewer and Company, weren't they?

(Testimony of P. E. Spalding.)

A. I do not think so. There were many figures——

Q. Well, who would know about it in C. Brewer and Company here? A. Nobody.

Q. Everybody is off the confines of the Territory of Hawaii that knows anything about that subject, is that right, at the present time?

A. I don't know anyone in C. Brewer and Company that can answer the question that you have asked me.

Q. You don't know anybody in C. Brewer and Company that can tell me whether or not Government Exhibit 1 for identification is a copy of what was filed with the Congress of the United States?

A. That's correct, I do not know.

Q. There will have to be some deep situations here before we get through, I guess. Mr. Harold Kay is the Assistant Secretary of the Honolulu Plantation Company, is he not, and was he not in '44? A. I believe so, yes.

Q. You have no reason for believing that Mr. Harold [1859] Kay, being also an officer of C. Brewer and Company, has any knowledge as to whether or not that document, Government Exhibit 1, was filed with Congress?

A. I believe he has more knowledge of it than I do, but whether he could state to you that that is the copy that was filed in Congress, I don't know. You will have to ask him.

Q. And with all the work that you have done in connection with this claim, and the conferences

(Testimony of P. E. Spalding.)

that you had, you can't tell whether or not Mr. Kay knows what was filed with Congress?

A. Well, now, you are asking me about a hundred pages here with a lot of exhibits and documents, whether they have been——

Mr. Rathbun: I imagine the Court——

The Court: Let him answer.

A. ——I was going to say, whether there were changes that were made from this at the time of filing, some changes in details, I don't know.

Q. Do you want to compare it with something that you have to make sure?

A. No, I certainly don't.

Q. Well, I'm going to ask you to do it. If there is anything in the files of C. Brewer and Company or Honolulu Plantation Company in this Territory that you can compare that with to answer my question, I am willing to give the gentleman [1860] time to do it so he can answer that question, get this mystery removed, if your Honor please, if I can. I will do it if I have to take depositions in Washington. It seems silly to have to.

The Court: Do you want to compare Exhibit 1 for identification?

The Witness: I'd like to send and get a copy of what was filed in Washington and present it.

Mr. Rathbun: This trial, if your Honor please, started weeks ago. That very question came up weeks ago. And if there isn't some good reason for it, they should have had their copy here by this time

(Testimony of P. E. Spalding.)

through their attorney, Mr. Courtney, or whoever it is.

The Court: I understood from Mr. Vitousek a few minutes ago that he'd send for it, that he had sent for it.

Mr. Rathbun: Well, I don't know when he sent or what date or anything about that.

The Court: But the basic question is whether or not the witness wishes to take Exhibit 1 for identification and compare it with anything available so he could answer whether or not it is identical with what was filed with Congress. Do you want to do that?

The Witness: Well, I don't know what I would compare it with. I would have to get the document that was filed in Washington. It must be in the records there. [1861]

Mr. Rathbun: Do you think, Mr. Spalding, if you talked to Mr. Kay right now and asked him whether there is anything over there that compared with it, whether or not it would help?

The Witness: I might.

Mr. Rathbun: Do you want to do it?

The Court: Do you want a recess?

Mr. Vitousek: Yes.

The Court: We will take a recess and let you talk it over.

(A short recess was taken at 10:40 a.m.)

(Testimony of P. E. Spalding.)

After Recess

The Court: How do we stand now?

Mr. Vitousek: That's what I was going to ask, to ask for the record there as to how we stood and how it was left.

The Court: Well, it was left, as I understand it, asking Mr. Spalding if by talking to Mr. Kay he thought he might be able to shed some light on the question before us. As a result of talking to Mr. Kay, Mr. Spalding, can you answer the question regarding this Congressional claim with any rate, any degree of accuracy?

The Witness: Only that—no, I can't, I can't answer it. Maybe some degree, more degree, but no complete comparison.

The Court: You are still not able to say whether or not Exhibit 1 for identification is identically the same as that [1862] which was filed with Congress?

The Witness: No. But if the Court would desire it, I am sure we could send on to Washington to request a copy.

Mr. Rathbun: Now, I am asking now of the Court for an order in this case, in view of the fact that the Court is perfectly familiar with our purpose. It is wholly admissible and goes to the credibility of the witness. I am now asking them to produce a copy from Congress so we can compare it to see whether it is or is not.

Mr. Vitousek: If the Court please, we don't believe that that is a proper subject matter of an

(Testimony of P. E. Spalding.)

order of this Court. We can produce what we have here. But if the claim is before Congress we can't do that any more than the Government can. The Court could order us to produce something that is peculiarly within our knowledge, the same as we have argued that all out on the question of discovery of documents at the beginning of this case. But on something that is easy for them to secure, or for them to secure the same as it is for us, then it's up to them to secure it. It isn't up to us to anticipate what the theory of their defense is, and they are entitled to have the theory, of course, but if it appears to them that this claim is material—and I stated right at the beginning that we contend that it isn't, and we'll point out reasons when it is offered, if it is—they should have secured this certified copy of the claim from Congress and had it here before the Court. [1863] It wasn't up to us to secure it. That there have been changes in it, I found since I was here. I wasn't in that case before Congress. I came before this Court in these cases and stated our position. And if this has been filed before the Committee of Congress, it then becomes a public document, open to the Government for inspection as well as to anyone else. Therefore, it is easily obtainable by the Government as it is by the respondent in this case.

The Court: Well, it is also true, isn't it, that the company should know what they filed with Congress?

Mr. Vitousek: The company should know what

(Testimony of P. E. Spalding.)

it filed with Congress, that's quite true, if the Court please, but Mr. Spalding explained that this company is a California corporation. The claim was prepared there and Mr. Courtney was handling the matter. As to whether there have been changes made in it, that is a matter we will have to find out.

Mr. Rathbun: Now, on the question of materiality, that's a different ground entirely than we are using this document for. What we have gone into here is on cross-examination. Just a minute, now, please. The cross-examination, the credibility of the witness. It's admissible on Mr. Schmutz' testimony. He identified it. It's admissible. It's an admission against interest. We'll show your Honor that it is. It's admissible on several grounds. Now, our duty, as your Honor very well said,—they should know what they filed in [1864] Congress by this time, the President of C. Brewer and Company, as stockholders in the extent of more than one-third of the stock of this company. But we have presented what we thought was filed in Congress. What more can we do? Now we find that there is some kind of mystery about it, that that isn't what was filed. All we are trying to do is find out what was filed. And if it varies from the things that we rely upon on the credibility of witnesses in this case, we will offer it for that purpose in evidence in our case, and then we'll know whether or not what we have asked has any materiality. If it doesn't change it any, why it stands as it did. We have a right to know that.

(Testimony of P. E. Spalding.)

The Court: It has not been clear to me heretofore, until your last question, that the exhibit for identification that you have and have had marked as such in this case was a document which the Government contends is identical with that which was filed in Congress.

Mr. Rathbun: All I know is that it is furnished to me as a lawyer as the one that was filed.

The Court: Through Government sources, of course?

Mr. Rathbun: Yes, your Honor, of course. Further than that, Mr. Vitousek just got through stating we have gone through this and we found that there were changes. Where did he find the changes from if he didn't have the original? How does he know there were changes? He must have seen the document or [1865] he wouldn't know there were changes in it.

The Court: Well, it seems to me the only way this confusion could be cleared up is to get an accurate copy of what was filed with the last Congress in relation to that Congressional claim to which reference has here been made. And since the Government has produced a document which it represents as a copy of the one filed with Congress, I think it is incumbent upon the company, since it was the one that filed it, to produce a copy of what was filed. I will ask you to do that.

Mr. Vitousek: Does the Court want to set the time?

The Court: Well, I don't know whether I can

(Testimony of P. E. Spalding.)

very well do that. I will ask you to do it with dispatch.

Mr. Vitousek: It has been pointed out to me that it may necessitate the whole record back there. Now, they can mumble all they want to, but I was informed by people that changes were made there, by people who know, should know, in the course of the proceedings. Now, I don't know the purpose of offering it other than as counsel stated, and that is, he is offering it, he says, to impeach the witness' testimony. Well, in the first place that will have to be pointed out, where there was any contradiction in it. In the second place, if the Court will examine this document it will find it contains a brief also which is certainly immaterial in impeaching anyone. Counsel is offering that, stating he is going to offer it in [1866] order to get this matter before the Court. And that's what we have no objection to being done, is to get a complete record for Congress, everything that went in, the whole testimony and record. That's what we have no objection to coming before the Court. But to have it piecemeal, when I don't know whether it's accurate—he now states I was not telling the truth. He's very loose with those statements. I have not seen the document, but I was informed on two or three occasions, and the testimony came out on this stand by Mr. Crozier himself that when that was presented to him he said he had seen it, he didn't know anything about it. It was stated by Mr. Schmutz in regard to two or three of the exhibits.

(Testimony of P. E. Spalding.)

So I don't know just where the changes were, or I would have compared them long ago. But I haven't got such a document and have been unable to find it locally.

The Court: As I understand it, the request—and that's what I base my direction upon—was for an accurate copy of what was filed, I presume originally, with the Congress last, past.

Mr. Rathbun: That's right, your Honor.

The Court: Something started the ball rolling.

Mr. Rathbun: Evidence that they produced. I don't ask for that in a hearing before a Congressional Committee or something of that sort. I want this claim. They filed pleadings there like they do in a law suit. A bill is based on it. [1867]

Mr. Vitousek: Let me get the understanding of the Court order, since I wish to except.

The Court: You may have an exception. But in view of the fact, I repeat, that the Government stands here with the representation that from Government sources it has acquired and introduced here as Exhibit 1 for identification a document which it believes to be a copy of the original claim filed with the last Congress by this company, and there is some confusion about it in the minds of officers of the company as to whether it is or isn't what was actually filed, on the theory that the company should know exactly what it did file, I am asking you, as attorneys for the company, to produce an accurate copy of what was originally filed by this company when it made its claim to the last Congress.

(Testimony of P. E. Spalding.)

Mr. Vitousek: And to that order I wish to enter an exception.

The Court: You may have an exception. And you asked me if there was any time limitation on getting it here. I do not think I can have a time limit, I don't think I can very feasibly put a time limitation on it. All I can ask is that you produce it with such dispatch as is possible, which I would suggest be sending for it air mail and having it returned or sent out here by air mail.

Mr. Rathbun: Of course, until that arrives, if your Honor please, when I finish with Mr. Spalding I want a reservation [1868] that I can cross-examine him further when we get it.

The Court: All right.

By Mr. Rathbun:

Q. Now, you stated, Mr. Spalding, that since 1944 there had been a change in business conditions and that the price of sugar had gone up, is that correct? A. That's correct.

Q. The expenses of producing sugar have gone up also? A. That's correct.

Q. In a ratio that exceeds, according to some authorities, the prices that are obtained?

A. That depends upon the circumstances of the particular company. In some companies they have not gone up in that ratio and in some they have exceeded that ratio.

Q. Yours has gone up, hasn't it, at least?

A. This Honolulu Plantation?

Q. Yes. A. Markedly.

(Testimony of P. E. Spalding.)

Q. Yes. Labor, materials and everything else that you use in the production of sugar?

A. The production in volume increases your unit cost.

Q. I'm talking about expenses, costs. They have all gone up?

A. You are talking cost per ton or cost——

Q. The things that you have to buy. Labor, for one thing. [1869]

A. Yes, it has gone up.

Q. Materials that you have to buy?

A. It has gone up.

Q. All the things that have gone into the production of sugar that you have to pay money for have gone up since 1944?

A. That's right. But not necessarily to the direct ratio in the change in sugar price.

Q. You haven't told me about ratio. They have gone up?

A. I thought that was your question.

Q. I notice on Honolulu Plantation Exhibit 13-U, on page 18, at the top under the document on 18 and 19, headed "Permanent Improvements and Property Accounts, December 31, 1944," an item of real estate, fee simple, \$182,214.85. I notice an item under that real estate, leasehold, \$267,864.78. What does that item under leasehold mean? How is it made up?

A. That's the unamortized balance of the leasehold values.

Q. At some time in the course of business you

(Testimony of P. E. Spalding.)

acquired some leases and you put upon your books a value for them, is that what you mean by that?

A. Yes.

Q. And then you amortized it? A. Yes.

Q. Commensurate with the expiration date of the lease, [1870] is that right, so at the time the lease was over it would all be amortized out?

A. That's right.

Q. But you had against it a reserve against depreciation, didn't you?

A. Not for depreciation.

Q. No? Wouldn't you have any reserve?

A. Your present depreciation is different from your amortization.

Q. Would you have any reserve for your amortization? A. Not necessarily.

Q. Well, did you at the Honolulu Plantation Company? A. Not that I know of.

Q. Well, do you know?

A. I'll see if they have it here. No, they have no reserve amortization.

Q. Now, when that item was originally made up, that's just a carrying on from year to year that results in \$267,864 in 1944, isn't it?

A. No, that was the figure at the start of '44. You see, over here. (Indicating.)

Q. I see that over there.

A. At the end of the year.

Q. Yes, that's after you depreciate or amortize for that year? [1871]

A. That's right.

(Testimony of P. E. Spalding.)

Q. Now, the \$267,864 at the beginning of the year '44, that's what was left of the sum after you had amortized for several years before that, wasn't it? A. That's correct.

Q. How did you make up the original sum which resulted in this amortization in '44 of \$267,864?

A. That was done long before I knew anything about the company.

Q. Haven't you ever investigated to find out?

A. No.

Q. Never? A. No.

Q. And you don't know. A. No.

Q. Don't you know, as a matter of fact, that that is established, that original account, by the amount of money that is paid out for clearing land when they lease land, the original planting and all the costs that went into it, prepared for cane land?

A. I don't know how they did it at that time.

Q. You haven't the slightest idea as the President of this Company?

A. Some 40 or 50 years ago the amount of the leasehold value was set up and was amortized. When I came into it, it was a balance remaining. When the leases were extended, the [1872] amortization was extended.

Q. So to understand you correctly, as President of C. Brewer and Company, the agent for the Honolulu Plantation Company, you have seen year after year that item; it was lumped years before on real estate only, wasn't it? A. Yes.

(Testimony of P. E. Spalding.)

Q. You have seen that item and you never saw fit to have that looked into to see what the origin of it was? A. That's correct.

Q. Just what did Honolulu Plantation Company sell in this recent sale for \$3,750,000?

A. Oh, its physical assets, good will.

Q. Well, now, just what do you mean first by physical assets?

A. Lands, leases, growing crops, trucks, tractors.

Q. Did you sell growing crops?

A. Growing crops.

Q. They were included, were they?

A. Yes, everything that was on the property.

Q. Moveables? A. Moveables.

Q. Trucks? A. Trucks.

Q. Vehicles? A. Vehicles. [1873]

Q. Everything?

A. Locomotives, ditches, reservoirs, buildings, all the fee simple land.

Q. Nothing was excepted from it?

A. Nothing was excepted.

Q. How about the cash on hand?

A. Cash on hand was not included.

Q. In 1944 the company had \$1,973,275.81 in current assets, did they not?

A. Let me see it. (Exhibit in evidence handed to witness.) Total assets, \$1,973,275.

Q. Now, the items on which this is made up, as shown by your balance sheet of December 1, 1944, didn't include any of these physical properties that you sold, did it?

(Testimony of P. E. Spalding.)

A. Well, it included these inventories of plantation supplies.

Q. Four hundred sixteen thousand dollars worth approximately, is that it?

A. Yes. No, it included the fertilizer stock, the yeast plant.

Q. All the things under the heading of inventories on page 12?

A. With one exception, which was the inventories of sugar in process, raw sugar, and the mill supplies themselves.

Q. How much would those amount to? [1874]

A. Oh, they might amount to 175, two hundred thousand dollars, depending on how much sugar—

Mr. Vitousek: I didn't hear that.

A. Between 175, two hundred thousand dollars, somewhere in that neighborhood.

Q. Then deducting that from the four hundred sixteen thousand under inventories on page 12, would leave about 216 or two hundred twenty thousand dollars which were physical properties, is that right?

A. Yes.

Q. Then take that off, two hundred thousand from the \$1,973,000, approximately, you'd have at least a million eight hundred—you'd have at least a million seven hundred fifty thousand, wouldn't you?

A. Yes.

Q. Current assets? A. Yes.

Q. Now, that's quick assets like certificates of deposit, cash, accounts receivable?

A. That's right.

Q. Sales in suspension, and so forth?
(Testimony of P. E. Spalding.)

A. Yes.

Q. And was there any substantial change in that?

A. Well, of course you have all your current liabilities.

Q. I understand all that. I'll get to that in just a [1875] moment. You're anticipating me.

A. I'm sorry.

Q. Now, on the other side, on page 13, you had at the close of business of December 31, 1944, \$775,000 of current liabilities, didn't you?

A. Yes.

Q. That's a pretty good current position, wasn't it?
A. Yes, a very good current position.

Q. So that you had approximately a million dollars over your liabilities in current assets at the close of business in 1944, didn't you?

A. Right.

Q. You didn't sell those, did you?
A. No.

Q. Such assets as that, is that right?

A. Yes, that's right.

Q. I show you on page 15 of Honolulu Plantation Exhibit 13-U an item under condensed statement of profit and loss for the year ended December 31, 1944, an item under the heading "Other Expenses: Expenses re Claim in Connection with Condemnation of Land and Properties, \$33,041.55." What made up that item?

A. Well, I'll have to go back to the books to find out what made it up. I can say what I think.

Q. Tell me what you think first. [1876]

(Testimony of P. E. Spalding.)

A. I think it's the expenses in connection with preparing the claim to Congress and also expenses in connection with some condemnation adjustments and payments for the growing crops which the Government awarded.

Q. You have another item showing that, don't you? Well, is any of that for witnesses' fees?

A. Not that I know of.

Q. Where would you put the expense of a witness fee in connection with your claim for Congress if you didn't have it there?

A. If there were any witnesses at that time in the year '44 it would undoubtedly go in there as an expense.

Q. Well, it might be in there, is that it?

A. I don't think we were before Congress in '44.

Q. When did you hear Mr. Schmutz who testified in this case?

A. It must have been in '44 some time.

Q. Before the expiration of this year, wasn't it?

A. Yes.

Q. That might be in there, might it not?

A. It might be.

Q. Can you find out about that?

A. You mean as to the details of that statement?

Q. Yes, especially what I asked you about, witnesses in connection with your claim. [1877]

A. If that's important.

Q. That's important to me.

(Testimony of P. E. Spalding.)

The Witness: May I ask a question, your Honor? Witness fees, that means fees paid to witnesses appearing before the Court?

The Court: I presume Mr. Rathbun includes Congressional claims.

Mr. Rathbun: Congressional claim. He didn't appear in Court in 1944, yet, as far as I know.

The Court: Wait a minute. I think there is confusion here between the two of you. The witness asked me about witness' fees, does that include fees paid witnesses for appearing in court, and I said or I think Mr. Rathbun means in connection with the Congressional claim.

Mr. Rathbun: I mean that. But if there were any fees paid in connection with this law suit, preparation or otherwise, that's what I'd like to know also.

The Court: Well, I think the point of confusion is that there may have been someone hired in relation to the Congressional claim but hadn't actually testified.

Mr. Rathbun: I don't want it limited to testifying.

Mr. Vitousek: If the Court please, there is still a lot of confusion there. I think the best thing is to ask for a breakdown, because the witness preparing himself to testify might be entirely different from someone preparing a claim or [1878] assisting in the preparation.

Mr. Rathbun: I am perfectly willing to have a breakdown.

(Testimony of P. E. Spalding.)

The Court: The best thing to do is to bring in a breakdown of that item, for the year 1944.

By Mr. Rathbun:

Q. Mr. Spalding, in this sale again that recently took place for \$3,750,000, did you sell this claim that you now are contesting in this courtroom? A. No, sir.

Q. What? A. No.

Q. You retained that?

Mr. Vitousek: May I have that question?

(The reporter read the question referred to.)

By Mr. Rathbun:

Q. Do you have a copy of the contract for sale under which this was put through, Mr. Spalding?

A. The contract for sale is a very—is simply an exchange, a simple exchange of letters.

Q. Simple exchange of letters? No details involved? A. No details involved.

Q. Didn't show what they bought, any items?

A. No, just simply bought everything that was there.

Q. Just sight unseen, is that it?

A. They spent months going over the property.

Q. But they didn't specify what they were buying?

A. No, except these physical properties and everything that was on them.

Q. What?

A. The physical properties and everything that was on them.

Q. The physical properties and everything that

(Testimony of P. E. Spalding.)

was on them? That's the only specification of detail that was made on what they purchased by any written document?

A. I can get a copy of the letter.

Q. Does that specify those things what you sold?

A. Well, there's some details about prepaid insurance and prepaid rents and adjustment of that sort to be made.

Q. And that's all? A. That's all.

Q. Would you produce them for inspection?

A. Surely.

Q. I mean by that, I mean anything that pertains to a contract by which you sold this property for \$3,750,000.

A. I'll bring in the letter of the offer and the letter in reply accepting.

Q. And the consummation of it.

A. That's all that exists.

Q. Now, previous to 1944 had this company ever carried on its books—meaning the Honolulu Plantation Company—this item [1880] appearing on page 13 of Honolulu Plantation Exhibit 13-U, at the bottom of the page under the heading "Notes," item 3 thereunder?

A. That's—no, that had never appeared on these.

Q. You never had an item on your books covering that claim, had you? A. No.

Q. You didn't have it on in '44 either, did you?

(Testimony of P. E. Spalding.)

Simply calling their attention to it, that's all, in their report? A. That's all you could do.

Q. Is it?

A. You couldn't set it up in your books.

Q. I disagree with you seriously. If you put value on it.

Mr. Rathbun: Subject to what I have stated, that's all the cross-examination at this time.

The Court: In other words, you wish to recall Mr. Spalding for further cross-examination when an accurate copy of the claim filed with the last Congress is presented?

Mr. Rathbun: And when he presents this breakdown.

The Court: And a breakdown of that inventory figure, or rather profit and loss figure for the year 1944, as presented.

Mr. Rathbun: I mean I'll have to cross-examine him. I don't know, but I want to leave it open in case I do. [1881]

The Court: No doubt he can come in promptly with a breakdown of that \$33,000 item.

Mr. Rathbun: I should think so.

The Court: Do you want him to come back with that now or do you want to wait?

Mr. Rathbun: We might as well clean up all we can now, if it's available.

The Witness: I'll have to send to the plantation for that breakdown where the books are kept.

The Court: Would it be available tomorrow?

(Testimony of P. E. Spalding.)

The Witness: I can probably have it by tomorrow.

The Court: Those are the only two items?

The Witness: And these two letters.

The Court: Oh, yes, the two letters.

Mr. Vitousek: I just want to get it clear. There were two letters, the offer and acceptance, the breakdown, and what is the other?

The Court: The Congressional claim.

Mr. Vitousek: Oh, yes.

The Court: All right, subject to those reservations, the cross-examination is concluded. You may examine him on redirect if you wish, or do you wish to wait?

Mr. Vitousek: I would rather wait, not for the claim but for those other matters on that sale, if the Court please, before we have redirect, so we can clean that up. The claim, [1882] I don't know, I'll try to get it as soon as possible. I mean the sale I want cleaned up.

The Court: I know what you are talking about.

The Witness: I think I'll be able to have these two items by tomorrow morning.

The Court: All right, you are excused at this time until tomorrow morning. And do you have any other witnesses? Mr. Austin is supposed to be recalled.

Mr. Vitousek: Mr. Austin was called out off the island, and I was going to call him further. Unless something develops in the cross-examination of Mr. Spalding on redirect, we were going to close with

Mr. Spalding. And to date I don't think anything happened but I wouldn't want to say I wouldn't call someone.

The Court: Do you have any further witnesses to use this morning? In other words, we might just as well adjourn now until nine o'clock tomorrow morning when Mr. Spalding will have two of the three things brought out on cross-examination.

Mr. Vitousek: Yes.

The Court: All right, then, nine o'clock tomorrow morning.

The Court adjourned at 11:25 o'clock, a.m.)

Honolulu, T. H., January 10, 1947

The Clerk: Civil No. 514, United States of America versus 257.654 acres of land, and Civil Nos. 521, 525, 527, 529, 532, 533, 535, 536, 540, 544, 548 and 684, for further trial.

The Court: Are the parties ready?

Mr. Vietusek: Yes.

PHILIP EDMUND SPALDING

a witness in behalf of the Defendants, having previously been sworn, resumed and testified further as follows:

Cross-Examination
(Continued)

The Court: Mr. Spalding, you are mindful that you are still under oath?

The Witness: Yes, sir.

The Court: I believe you were asked to come

(Testimony of P. E. Spalding.)

for two matters, one, to break down a certain figure, and bring documents pertaining to the recent sale of the Plantation Company.

The Witness: I have them here.

The Court: Mr. Rathbun, he has brought the documents that you asked for.

Mr. Rathbun: Well, I'm looking at another one that they have handed me.

Mr. Vitousek: I have handed copies to them.

The Court: Will you sit there for just a moment until Mr. Rathbun is ready to ask you additional questions on cross-examination.

Mr. Rathbun: Now, what else do you have there? Is it the same things that I have?

The Witness: The same thing as you have, that's the same as I have, the same as you have.

Mr. Rathbun: Well, we have looked at these two now.

The Court: Any further questions?

Mr. Rathbun: What about the claim? They were to prepare that over night.

The Court: No, that was not my understanding. I told them to have a copy, to get an accurate copy—

Mr. Vitousek: What I am trying to do, which is most difficult being here in Court, is to get by telephone the attorney who handled this matter, to have him get the copy, if there are differences. That's Mr. Courtney in Washington.

The Court: You have?

Mr. Vitousek: I had a call but it has not come

(Testimony of P. E. Spalding.)

through because I have court in the morning and there's about four or five hours difference; it's a little difficult to get an appointment call. As soon as I do, he will either be asked to send one out or we will know what the differences are, if any. I'm as anxious to expedite this as anyone, if the Court please.

The Court: Well, that's the third point that has been [1885] reserved before we adjourned yesterday. When we adjourned yesterday, it was clear that there were only two of the three points that we could possibly clear up today.

Mr. Rathbun: These papers pertaining to the sale, do you want them to go in evidence, Mr. Vitousek?

Mr. Vitousek: Well, you called for them.

Mr. Rathbun: I can't offer the evidence in my case.

Mr. Vitousek: I have no objection. We'll raise no objection.

Mr. Rathbun: Mark them for identification. I have been furnished by Mr. Vitousek, pertaining to the sale of these properties, a letter dated November 29, 1946, addressed to Honolulu Plantation Company, care of C. Brewer and Company. Honolulu, by Oahu Sugar Company, Limited, which I ask to be marked.

Mr. Vitousek: Those are for your use. Those are copies of these, if you want to use them, so you can keep those.

Mr. Rathbun: I ask that it be marked for iden-

(Testimony of P. E. Spalding.)

tification as Government's Exhibit, whatever the next one is.

The Court: It may be so marked.

The Clerk: U. S. Exhibit 12 for identification.

(The letter referred to was marked "U. S. Exhibit No. 12 for identification.")

Mr. Rathbun: Also furnished to me is a letter dated December 3, 1946, directed to Honolulu Plantation Company, [1886] care of C. Brewer and Company, from Oahu Sugar Company, and I ask that that be marked for identification.

The Court: It may be so marked.

The Clerk: U. S. Exhibit No. 13 for identification.

(The letter referred to was marked "U. S. Exhibit No. 13 for identification.")

Mr. Rathbun: Also there has been handed to me a letter dated December 6, 1946, directed to Honolulu Plantation Company, care of C. Brewer and Company, from Oahu Sugar Company. I ask that that be marked for identification.

The Court: So ordered.

The Clerk: U. S. Exhibit 14 for identification.

(The letter referred to was marked "U. S. Exhibit 14 for identification.")

Mr. Rathbun: What's the date of that last letter?

The Clerk: December 6, 1946.

Mr. Rathbun: I also offer—there has been furnished to me also a letter dated January 1, 1947, directed to Oahu Sugar Company. care of Ameri-

(Testimony of P. E. Spalding.)

can Factors, Limited, Honolulu, from Honolulu Plantation Company, which I ask to be marked for identification.

The Court: So ordered.

The Clerk: U. S. Exhibit 15 for identification.

(The letter referred to was marked "U. S.

Exhibit No. 15 for identification.") [1887]

Mr. Rathbun: I'll have to take time to read this. This isn't in the copy furnished me. This is a resolution. There has also been furnished a copy of a resolution passed by the Board of Directors, with no date, pertaining to this sale, which I ask be marked for identification.

The Court: Resolution by what company?

Mr. Driver: Honolulu Plantation.

Mr. Rathbun: Honolulu Plantation Company. There is no date of the passing of the resolution.

The Witness: I might say something. The letter of acceptance of January 1st enclosed copies of the original letters and the resolution adopted by the directors, which was approved by the shareholders. It's all referred to in that letter.

Mr. Driver: But the resolution itself is undated.

The Witness: It's referred to in the body of the letter. All these were attached to the letter of acceptance to complete the record.

Mr. Rathbun: Meeting date, December 23, '46.

Mr. Vitousek: Has that been marked yet?

The Court: It hasn't been marked yet but I am wondering if it should be something, as part of something marked.

(Testimony of P. E. Spalding.)

Mr. Rathbun: It goes with the letter of January 1st.

The Court: It should be included with U. S. Exhibit 15 for identification. [1888]

By Mr. Rathbun:

Q. Mr. Spalding, in the letter of January 1, 1947, it provides for instruments of conveyance to be prepared, including bills of sale, does it not?

A. Yes, yes.

Q. Those have not been prepared yet, I take it?

A. No.

Q. Completed? A. No.

Q. Also an inventory. That has been completed yet? A. No.

Q. The detail, then, of certain things that are conveyed, does not appear by these letters as yet, does it?

A. No, the detail that the—the letter covers it, but the detail—

Q. The bill of sale will cover, I assume, the exact assets that they are taking over, will it not, so far as things that are concerned that are visible or tangible?

A. Well, it will depend how the lawyers want the bill of sale drawn. It will cover everything that is included in here. How much detail they want will be furnished.

Q. This document, marked for identification as Government's Exhibit 3, being the tentative draft of the agreement that was enclosed, lease rather, that was never signed or executed, was it? [1889]

(Testimony of P. E. Spalding.)

A. No.

Q. By anyone? A. No.

Q. Either by the trustees of the Damon Estate or Honolulu Plantation Company? A. No.

Mr. Rathbun: That's all we have.

The Court: What's that?

Mr. Rathbun: That's all. I want to make some substitution, however.

The Court: You are still reserving one point on the Congressional claim?

Mr. Rathbun: Yes, your Honor. When we have that claim straightened out—

The Court: There's one other, a breakdown that you asked for.

Mr. Rathbun: I know. I have seen that and I haven't any questions on that.

The Court: Very well.

Mr. Rathbun: I want at this time now to substitute for Government's Exhibit No. 2 for identification a copy instead of the original. This doesn't belong to us. I had that agreement yesterday.

The Court: Yes.

Mr. Rathbun: Independent of any notations that are on [1890] it in handwriting.

Mr. Vitousek: You have checked it?

Mr. Rathbun: I have, yes. Same thing.

The Court: Very well, a copy may be substituted for the original of U. S. Exhibit 2 for identification.

Mr. Rathbun: And may this copy be marked 2

(Testimony of P. E. Spalding.)

for identification and just physically withdraw this?

The Court: Yes.

Mr. Rathbun: Also attached to Government Exhibit No. 2 for identification is a lease, a proposed lease, which has been marked Government Exhibit 3 for identification. I now ask leave to withdraw the original of that document, namely, the proposed lease, and substitute therefor a copy and ask that that be marked Government Exhibit 3 for identification instead of the original.

The Court: Very well.

Mr. Rathbun: As to Government Exhibit 6 for identification, I also ask leave to withdraw that copy which has been marked, because that's their original copy with their own notations on it, in the Damon Estate, and ask leave to substitute for that a copy, being the letter dated August 15, 1941, and ask that the copy be marked Government Exhibit No. 6 for identification, and that I be allowed to withdraw the copy which has already been marked.

The Court: Very well. [1891]

Mr. Rathbun: I think that's all we have with Mr. Spalding.

The Court: Very well.

Mr. Vitousek: I ask for redirect, please.

The Court: You may proceed.

Redirect Examination

By Mr. Vitousek:

Q. May I see that breakdown? (Witness hands a sheet of paper to Mr. Vitousek) This sheet is

(Testimony of P. E. Spalding.)

headed "Breakdown Explanation of Item Entitled Expenses Re Appeal to Congress \$33,041.55." Was that prepared at counsel's request yesterday?

A. That was prepared, yes.

Q. And that item appears in the annual report for what year? A. 1944.

Mr. Vitousek: If the Court please, we offer this in evidence.

The Court: Hearing no objection, it may be received as Plaintiff's exhibit—

The Clerk: Honolulu Plantation Exhibit No. 17.

The Court: Seventeen?

The Clerk: Seventeen, your Honor.

(The document referred to was received in evidence as Honolulu Plantation Company's Exhibit No. 17.)

Q. Mr. Spalding, you were asked yesterday about Matson Securities Company holdings. Do you know the ownership of the [1892] Matson Securities Company??

A. I can't say definitely that I know, but I believe it to be the ownership—the ownership is Mrs. William B. Roth, who is a former—a daughter of Captain Matson who organized the Matson Navigation Company.

Mr. Vitousek: If the Court please, in reference to U. S. Exhibit 6 for identification, being a letter from the trustees of the Damon Estate to C. Brewer and Company, dated August 15, 1941, which was produced yesterday by counsel for the United

(Testimony of P. E. Spalding.)

States from files, I will ask that the reply be produced so we can offer it for identification, by the Government, reply to the trustees, to this letter by Honolulu Plantation.

Mr. Rathbun: The letter is from Damon to Brewer, isn't it?

Mr. Vitousek: This was from Damon to Brewer. I am asking that you give the reply, produce the original reply from Brewer to Damon, reply to this letter.

Mr. Rathbun: Why don't you get it from Brewer?

Mr. Vitousek: The original would be in the hands of the Damon Estate, and I have been informed that you have them in your files.

Mr. Rathbun: You can get it from the Damon Estate as well as I can.

Mr. Vitousek: You had the files here yesterday.

Mr. Rathbun: What files did I have here yesterday? [1893]

Mr. Vitousek: The Damon Estate said they loaned you the files. I just asked you if you have it.

Mr. Rathbun: I can go into the office to see if I have it in the files.

The Court: All right, we'll wait until you get your file.

(Mr. Rathbun leaves courtroom, returning in a few minutes with a document.)

By Mr. Vitousek:

Q. Mr. Spalding, I will show you a letter, original letter handed to me by counsel for the Gov-

(Testimony of P. E. Spalding.)

ernment, dated August 21, 1941, addressed to Trustees under the Will of Samuel Mills Damon, deceased, and purported to be signed by P. E. Spalding. Is that your signature? (Showing exhibit to witness) A. That's my signature.

Q. Was that letter sent to the trustees?

A. It was.

Q. Now, in the answer, what communication does it answer?

A. Their letter of August 15, 1941.

Q. I'll show you U. S. Exhibit 6 for identification. Is that the letter that was being answered by your communication of August 21, 1941?

A. That is the letter.

Mr. Vitousek: If the Court please, I have a photostatic copy of the carbon of this letter. I'd like to offer it so I [1894] can hand the original back to counsel, if there is no objection.

The Court: Very well. The letter dated August 21, 1941, may be marked—

The Clerk: Honolulu Plantation Company Exhibit No. 18.

(The document referred to was received in evidence as Honolulu Plantation Company's Exhibit No. 18.)

[Printer's Note: Exhibit No. 18 is set out in full at page 1541, of this printed Record.]

Q. Yesterday, Mr. Spalding, in response to questions on cross-examination you gave the duties of Mr. Merriam as head of the land department of Brewer and Company? A. Yes

(Testimony of P. E. Spalding.)

Q. Mr. Spalding, in connection with the Honolulu Plantation Company, who had authority to execute documents? A. I did.

Mr. Rathbun: Just a moment. I object to that as immaterial who had authority to execute documents. Mr. Merriam is the only man involved in this. The record speaks for itself on that. He originated these very negotiations.

Mr. Vitousek: Who did?

Mr. Rathbun: Mr. Merriam, by documents.

Mr. Vitousek: Well, now, if the Court please, that is not the fact shown by the evidence. The testimony of Mr. Spalding was that he handled the negotiations. The matter in evidence here, two letters from Mr. Merriam entered into it after the date of the letters upon which we rely, discounting the lease. May I see the Damon Estate lease?

The Clerk: The lease?

Mr. Vitousek: Yes. If the Court please, the exhibit 9-K, Honolulu Plantation Company, is a lease from the Damon Estate to Honolulu Plantation Company, and two letters attached to it, being a letter to Brewer and Company, agent for Honolulu Plantation Company, to Trustees of the Damon Estate, which is dated October 18, 1940, and a reply from P. E. Spalding, Vice-President of C. Brewer and Company, agent, Honolulu Plantation Company, October 21, 1940. Now, according to my notes the letters of Mr. Merriam were dated respectively November 11, '43, and September 16, '43.

(Testimony of P. E. Spalding.)

The Court: Let me see them, please.

Mr. Vitousek: Which ones?

The Court: The letters that you have reference to, exhibits what?

Mr. Vitousek: Eight and nine.

The Court: You are not concerned with Exhibit 2 for identification, which is the letter accompanying that draft lease which is Exhibit 3?

Mr. Vitousek: Well, this one is following.

Mr. Rathbun: Letter of November 29, 1940, signed by Mr. Merriam.

Mr. Vitousek: Yes, but that still follows.

Mr. Rathbun: Originated this transaction.

The Court: What have you? [1896]

Mr. Vitousek: This originated—I'm having the Court look at the dates. It was a month after the transaction was completed.

Mr. Rathbun: That's what you think.

Mr. Vitousek: Well, I'll argue to the Court later.

Mr. Rathbun: My objection is that that is a point for the Court to consider and determine whether or not he had authority from all of these facts in evidence, including the letters.

Mr. Vitousek: The Court can determine it when the facts are in evidence, but so far Mr. Spalding stated that his duties, his duties as recited by Mr. Spalding, gave Mr. Merriam no authority to vary the terms of the lease. The evidence shows that Mr. Spalding, Mr. Kay and Mr. Austin, and prior to that, I believe, Mr. Larson, were the only ones

(Testimony of P. E. Spalding.)

who had the power of attorney from the company, Honolulu Plantation Company, which is a California corporation. Now, the only other possible use these letters could be for would be an admission against interest of the party who had authority to do so, that is, the writers of the letters, and we have a right to bring that out on redirect, the letters having been presented. They haven't been offered in evidence. And it makes it a little difficult to examine on letters not in evidence. But I think we have a right, since he has asked that question, to clear the matter up. [1897]

Mr. Rathbun: You may assume that they are going to be offered in evidence.

The Court: Well, I am inclined to think that ultimately it is a question for the Court to determine whether or not these letters were within the scope of this man's authority. The witness may tell us what his authority was and what, if he knows, Mr. Merriam's authority was. But for him to state definitely as a conclusion that certain things were not within his and Merriam's authority seems to me to be coming pretty close to what the Court is going to decide.

Mr. Vitousek: That isn't what I asked.

The Court: I think your question was, who was the only one?

Mr. Vitousek: Who were the ones. Did I say only one?

The Court: Well, maybe you said the one. Let's have the question.

(Testimony of P. E. Spalding.)

(The reporter read the last question)

Mr. Rathbun: That's a question for the Court to determine in this case.

The Court: We already have in evidence here the powers of attorney running to the witness. They speak for themselves.

Mr. Rathbun: And he said on cross-examination what the duties of Mr. Merriam were. He has already testified that on cross.

The Court: He told us he was the manager of the land [1898] department, had charge of the documents and general oversight of the land.

Mr. Vitousek: That's quite true. That in general is what he stated.

The Court: In general?

Mr. Vitousek: Yes.

The Court: I think the objection is all right. The objection will be sustained and that answer may go out. You may have an exception.

Mr. Vitousek: If the Court please, we note an exception, and I want to make an offer of proof. I offer to prove by this witness that the only party who had any authority in the Territory of Hawaii, who had any authority to execute documents in behalf of the Honolulu Plantation Company, execute leases or release lands from leases, the only parties were those named in the powers of attorney on file as exhibits in this case; that Mr. Merriam had no authority whatsoever to execute any documents of a nature that would vary a lease already in existence, or to execute a lease or to execute

(Testimony of P. E. Spalding.)

a surrender of a lease, partial or whole. And also that that's a matter within the knowledge of the trustees of the Damon Estate.

Mr. Rathbun: We object to the offer, if your Honor please, for the same reasons in the objection and for the further reason that the question would simply be an attempt to vary what is in evidence, which is for the Court to determine on the [1899] fact of the papers.

The Court: Well, we have clearly in evidence the power of attorney in fact running to the witness now on the stand, and one or two others, I think.

Mr. Vitousek: Yes. If the Court please, may I present my view of this?

The Court: Yes.

Mr. Vitousek: On this offer?

The Court: Yes.

Mr. Vitousek: It's been shown without any question that this is a California corporation.

The Court: That's right.

Mr. Vitousek: Therefore, the company acts only through its officers there or through authority delegated in writing.

The Court: That's right.

Mr. Vitousek: That is, under the statute of frauds it would have to be so. The only authority delegated in writing, so far as this Court is concerned—the only authorities are two powers of attorney, one running from the plantation to Mr. Spalding, Mr. Larson, Mr. Jamieson and H. T.

(Testimony of P. E. Spalding.)

Kay, which expired, which, rather, terminated; and the other one, a later one, running to P. E. Spalding, S. L. Austin and H. T. Kay. These documents, as I read them, give no power of substitution. Now, in order to show—

The Court: Excuse me. They do give power to employ agents, [1900] do they not?

Mr. Rathbun: They'll have to give the power anyway to agents to carry out—

The Court: One at a time.

Mr. Rathbun: They wouldn't have specific authority for that. They are presumed to have authority to appoint such agent to carry out the terms of the attorney-in-fact instrument.

The Court: Usually these powers of attorney have that specifically in there, and I presume this one does. Well, anyway it looks to me as if Merriam was an agent of the attorneys-in-fact.

Mr. Vitousek: If that is so, if the Court please, there being no written delegation of authority—that is the point I was making—then the attorneys-in-fact can explain what authority was delegated to him.

The Court: That is an entirely different matter.

Mr. Vitousek: And that's what is in this offer. In other words, did they delegate to him any authority?

The Court: I'll allow the witness to describe what Merriam's position was and what his duties and responsibilities were, which is an entirely dif-

(Testimony of P. E. Spalding.)

ferent thing, I think, than the question you did ask.

Mr. Vitousek: Well, that's what I was getting at.

The Court: All right. [1901]

Q. Now, Mr. Spalding—I don't find that authority in here, if the Court please—who was Mr. Merriam employed by?

A. He was employed by C. Brewer and Company, with the title of Manager of the Land Department.

Q. Now, just what were his duties?

Mr. Rathbun: I object to that for the reason stated in the objection to the original question, and plus the fact that he has already been over that on cross and given the full statement of his duties. I asked him that specific question.

Mr. Vitousek: If the Court please, this is redirect. That matter was brought out on cross.

The Court: It is substantially the same question that was asked on cross, however. Since it is a new matter on redirect, I will allow the question. You may have an exception. Do you have the question in mind?

The Witness: It is the duties.

A. His duties as Manager of the Land Department, was to take care of all the documents in connection with all land matters and the carrying out of all obligations as a result of leases, or any duties imposed upon the plantation by virtue of the leases. He would prepare tentative drafts of leases,

(Testimony of P. E. Spalding.)

and he would negotiate perhaps with the attorneys of the lessors as to some of the details and the wording of in some of these leases. His negotiations, however, would be entirely controlled by the instructions from principals. He would have [1902] no discretion in that.

Q. Any other duties?

A. Yes, he undertook to oversee the preparation of maps of various plantation properties. We also had in his charge the lands in Maunawili which were owned by C. Brewer and Company, where he acted in general charge of that property.

The Court: Where is that?

A. It has since been sold.

The Court: Where is it—on this island?

A. On the other side of this island.

The Court: No connection with this plantation?

A. No connection with this plantation at all. This testimony should be just in connection with the duties of this plantation?

Q. His duties. I want to get all that you can remember. A. I think that about covers it.

Q. Well, did he have as part of his duties the executing of any instruments?

A. No. No, he had no authority to execute instruments.

Q. Yesterday, Mr. Spalding, you were shown what has been marked U. S. Exhibit 10 for identification, original signed by yourself to Admiral Ghormley. I will hand it to you.

The Court: Exhibit 11 for identification.

(Testimony of P. E. Spalding.)

Q. I also show you reply addressed to C. Brewer and Company, Limited, or copy of reply from Admiral Ghormley, which [1903] has been marked Exhibit 11 for identification. In the letter from Admiral Ghormley to Brewer and Company, being Exhibit 11 for identification, a reference is made as to the letter: "Receipt of your letter 5701-HTK, no date, is hereby acknowledged." Can you explain that fact, that says no date. And this letter is from Admiral Ghormley and is dated January 12, 1944; Exhibit 10, and it's dated January 3, 1943.

A. Yes, I can explain that. The situation at Honolulu Plantation was becoming very serious with these continued takings of land, and the letter was prepared—

Q. Which letter, now? A. This letter.

Q. That's Exhibit 10 for identification?

A. Exhibit 10. And called on, made an appointment with Admiral Ghormley and called on him some time early December.

Q. What year?

A. Forty-three. With the letter without any date because it was a letter of considerable importance to the plantation and I wanted to discuss it with him and see if the Navy would have any objection to such a letter or in general to discuss the whole problem. He indicated no objection and apparently that undated letter was left with him. Before mailing him a letter officially. Although I also consulted with the directors in San Francisco.

(Testimony of P. E. Spalding.)

And they agreed that such a letter should be sent. It was dated January 3, 1943, the '43 is undoubtedly [1904] an error.

Q. What should it be?

A. It should be 1944. The letter was in Admiral Ghormley's hands several weeks, a month before that.

Q. So the date on this letter, January 3, 1943—

A. A typographical error.

Q. It should be 1944? A. Should be 1944.

Mr. Vitousek: If the Court please, would it be possible—it wouldn't take much longer and Mr. Spalding has a date—not to have a recess? I'd like to go on.

Mr. Rathbun: What's that?

The Court: Any objection to passing the ten o'clock recess?

Mr. Rathbun: No, none at all.

By Mr. Vitousek:

Q. Now, in connection with that letter, Mr. Spalding, to Admiral Ghormley, you stated yesterday, as I recall it, that the Government had in possession a number of these parcels before suit was filed? A. That's correct.

Q. Well, had they taken possession of any of them, and if so, approximately how much, before you sent that letter to Admiral Ghormley?

A. Well, now, they entered on some of these lands in [1905] November and December of '43. Just the exact acreage I do not remember. They

(Testimony of P. E. Spalding.)

entered under a right of entry, I think. And it was these takings that started in November of '43 which gave us this great concern with the ultimate result would be. At that meeting I spoke of, Admiral Ghormley stated he thought that was probably the last of the takings, but his officers who were present corrected that impression; there were to be further takings. That was the reason for proceeding with the letter, because with the further takings the situation was even more serious than we realized.

Q. Now, Mr. Spalding, I show you Honolulu Plantation Company's Exhibit 13-U. Yesterday on direct examination you were asked concerning the amount of current assets as shown on page 12, in fact, that some of them were and some of them were not included in the sale, is that correct?

A. That's correct.

Q. Do you know the amount of those assets that were included in the sale?

A. Of these current assets?

Q. Current assets I'm referring to only. That's shown on page 12 of Exhibit 13-U.

A. Well, the cash, U. S. bonds and certificates, and the accounts receivable, and the sales in suspense were excluded from the sale, and certain of the inventory items were excluded from the sale. Let me put it this way: certain of [1906] the inventory items were to be paid for separately, that is, the plantation supplies, raw sugar, molasses on hand, were to be paid for separately.

(Testimony of P. E. Spalding.)

Q. Well, of the total amount shown there, what was the amount included in the sale, in the total of one million nine hundred some odd shown on this page, and the amount to be paid for separately?

A. Well, against this million nine, there are—

Q. No, I'm just talking about the sale at this time.

A. About two hundred thousand dollars was to be paid for separately.

Q. Paid for separately? A. Yes.

Q. Well, how much was included, the value of the amount included?

A. About the same amount.

Q. About the same amount?

A. About the same amount.

Q. So of these assets, about two hundred thousand should be deducted from the one million nine?

A. That's right.

Q. Roughly. Now, on the opposite page, page 13, is shown the liabilities? A. Yes.

Q. That's correct? What was the amount of the liabilities? [1907]

A. Seven hundred seventy-five thousand.

Q. Well, after the sale, were there any liabilities in addition to those shown?

A. Well, we had liabilities with regard to the retirement pay and separation pay and the pensioners of the plantation.

Q. Well, could you give the amount, the approximate amount of that liability?

(Testimony of P. E. Spalding.)

A. Well, the shareholders appropriated \$400,000 out of the proceeds of the sale for that to meet that purpose.

Q. Now, Mr. Spalding, referring you to the various letters, starting with the one to Honolulu Plantation Company of November 29, 1946, U. S. Exhibit 12 for identification, letters, U. S. Exhibit 13, U. S. Exhibit 14 and 15, would you state with the documents whereby this sale was made?

A. Yes.

Q. Now, did that sale include growing crops?

A. It did.

Q. And what, in your opinion, is the value of the growing crops?

A. The value, in my opinion, the value of the growing crops was approximately a million dollars.

Q. Did that sale include moveable personal property?

A. It did.

Q. In addition to the amount you said, referred to in the current assets? [1908]

A. Yes.

Q. Just give a general description.

A. The locomotives, the trucks, the tractors, the cane loaders, the tools and implements, the laboratory supplies and equipment, office furniture, all the moveables of the plantation.

Q. What, in your opinion, was the value of the moveables you have described?

A. Three hundred thousand dollars.

Mr. Rathbun: There is no question about that, it's immaterial.

Mr. Vitousek: It is material. This sale was

(Testimony of P. E. Spalding.)

brought in by the Government yesterday, the amount of the sale. We didn't bring in the amount. But the matter has been brought in by the Government. The Government also queried about these current assets. Now, the evidence in this case in regard to value excluded moveables and growing crops. So we are entitled to have that amount in view of the fact that the Government brought in the sale, and later on in the argument in this case we can reduce it to a comparable basis. That is part of what was brought in yesterday. We are entitled to bring in the rest of it.

Mr. Rathbun: Mr. Crozier testified that in his value he included moveables.

Mr. Vitousek: I'm sorry, there's a difference of opinion [1909] on that.

Mr. Rathbun: There isn't any difference of opinion in our camp about it.

The Court: The witness may answer the question. You may have an exception.

The Witness: May I have that question?

(The reporter read the last question and answer)

A. My answer would be the same.

Mr. Vitousek: If the Court please, that's all the redirect, reserving the right in case he is examined on Exhibit 1 for identification for further redirect.

The Court: Any recross?

Mr. Rathbun: Yes, your Honor.

(Testimony of P. E. Spalding.)

Recross Examination

By Mr. Rathbun:

Q. Calling your attention, Mr. Spalding, to Government's Exhibit No. 2 for identification, did you have knowledge of the sending of that letter on or about the date that it bears, November 29, 1940? A. Yes, I think I have knowledge.

Q. You knew that Mr. Merriam sent it and dictated it, did you?

A. I requested him to prepare a tentative form of lease.

Q. And you left it to him to prepare that letter, did you? [1910] A. That letter, yes.

Q. Was it necessary under the duties that you say were assigned to Mr. Merriam to submit every letter pertaining to leases, real estate matters of C. Brewer and Company, to you before sending them?

A. If they were concerned with the preparation of a lease or the execution of a lease or the detail of a lease or purchase, anything that required my signature, I saw.

Q. How would he know what required your signature?

A. He's been with the company for a great many years. He was thoroughly conversant with his authorities and what authority he lacks.

Q. Still you never saw these two letters that he wrote, September and November of 1943, marked Government Exhibits 8 and 9 for identification?

(Testimony of P. E. Spalding.)

A. Those I never saw.

Q. Then he didn't always show you the letters that he wrote in connection with lands and matters pertaining to lands?

A. Mr. Merriam failed very materially towards the end of his employment.

Q. Oh, he failed? A. Very materially.

Q. You still kept him on the job?

A. We tried to.

Q. You considered he was competent to carry on his [1911] duties, didn't you?

A. I'm very much concerned about him.

Q. Will you answer my question, please?

A. Well, the answer to that would have to be qualified. But if you want just a yes or no, the answer would have to be no.

Q. Why do you say no?

A. Because of his failing health.

Q. Did you allow a man who handles the management of the real estate of C. Brewer and Company in connection with the matters that are involved in this law suit, even though you know was incompetent, to handle them, is that what you want to say?

A. We engaged able assistance in around 1941 to go into that office to relieve Mr. Merriam because of our concern.

Q. Yes, but was that because he was incompetent? A. Because of his—

Q. Oh, because of his health?

A. —because of his health.

(Testimony of P. E. Spalding.)

Q. You wanted to relieve him of some of the burden of the duties? A. Yes.

Q. You didn't consider him incompetent, did you? A. He was becoming incompetent.

Q. Well, did you consider him incompetent at the time [1912] these letters were written?

A. I certainly would consider that he was incompetent to have written letters such as that.

Q. You had assistants to know what he was doing in there?

A. We desired to have assistants.

Q. Well, did you at the time these letters were written? A. I don't know.

Q. Well, now—

A. —how he wrote those letters.

Q. —you think about it, please, so you can answer that question for me.

A. Well—may I have that question?

(The reporter read the question)

Q. That's the question, at the time of these letters that I asked you about.

A. In the operation of an office—

Q. I don't care about an operation of an office. I want to know specifically what I am asking you about. A. I can't answer the question.

Q. You can't answer it?

A. Not yes or no.

Q. Did you send assistants down to him that you mentioned to report to you on matters that he was attending to? A. No. [1913]

Q. Letters that he was reading? A. No.

(Testimony of P. E. Spalding.)

Q. You never went to that extent?

A. No.

Q. You left it to him? A. Yes.

Q. And let him carry on his business with the public and all the people that Brewer did business with? A. Yes.

Q. In the document marked Government Exhibit 12 for identification, being the letter of November 29, 1946, written to the Honolulu Plantation by Oahu Sugar in regard to these pensions it is stated in substance that the purchaser will assume no obligations in connection with compensation, bonuses or pensions due or payable to the plantation personnel on account of or arising for services performed prior to date of transfer of property to Oahu Sugar Company. Now, pursuant to that clause the Honolulu Plantation Company didn't have to pay out anything in addition after the date of this sale on account of those, did it?

A. Well, they had a moral obligation to these men who were not—

Q. Moral obligation? Yes, go ahead. Did you finish?

A. The moral obligation to these employees who were not being carried on the payroll. [1914]

Q. Who were not being carried on the payroll? Some men who had retired?

A. Some men who had retired. Some men who were not going to be employed by Oahu Sugar or be employed by the C. and H.

Q. As to all of the others, they assumed this

(Testimony of P. E. Spalding.)

continuing obligation on the retirement and pensions, the Oahu Sugar Company?

A. No, they did not.

Q. They didn't take over your pension system?

A. No, they very definitely rejected it.

Q. They rejected it, as I read it, for services performed prior to the date of the transfer of the properties to Oahu Sugar Company?

A. Yes. Oahu Sugar Company refused to assume any obligations on account of prior service.

Q. On account of prior services? Now, just what did that mean?

A. Well, it meant if there was any pension obligation, any separation pay, any other obligations that might be charged against Honolulu Plantation because of services prior to January 1, 1947, Oahu Sugar Company would accept none of that obligation.

Q. Then the pension obligations that had been established by Honolulu Plantation Company expired insofar as anything that Honolulu had originated, and also the retirement system at the [1915] date of this agreement, is that it? A. Right.

Q. And any pension system that was to be put in force was to be newly put in force by Oahu Sugar, is that it? A. That's right.

Q. Didn't you have a reserve established for these obligations that had already accrued pertaining to retirement and pensions?

A. We did not.

Q. You never established a cent of reserve for

(Testimony of P. E. Spalding.)

it? A. That's right.

Q. How much did it amount to, those liabilities that you pointed out here on account of services performed prior to the date of transfer of the property?

A. Well, there was no legal obligation that I understand.

Q. Well, that's what we want to get at. You brought that out. What do you mean there was no legal obligation?

A. There was no legal obligation on the Honolulu Plantation to pay any additional sums beyond the wages that became due at the end of December, 1946. But the company felt there was a moral obligation, and this is why they appropriated the sum of \$400,000 out of the sales money to meet that obligation. If it hadn't been for the fact that many of these employees were picked up by Oahu Sugar Company and many by C. and H., the obligation would probably have been much greater.

Q. Well, let's confine it to what it was. Four hundred you took out. Have you made up a statement of what you owe under that that you say there is no legal obligation, legal liability, to pay it? Is that right?

A. That's my understanding.

Q. You won't have to pay a cent out of the four hundred thousand as far as the legal obligation is concerned?

A. That's what I understand.

Q. Have you made up a statement to show what

(Testimony of P. E. Spalding.)

your moral obligation is that you will have to pay out of that four hundred thousand?

A. The statements are being made up. The accounts are being set up as to the different payments to the individuals.

Q. Yes, I understand. But you haven't made up such a statement yet? A. No.

Q. When do you expect to have it completed?

A. Within the next few days.

Mr. Rathbun: I ask that this be held open until we see that, if your Honor please, seeing that they brought this up, now. It's a very material question.

The Court: Very well. When you come back at the time we have this Congressional claim matter.

Mr. Rathbun: This can be held open also the same way as that is. I mean, I ask that that be done. [1917]

The Court: You will also come prepared to answer the question relating to this breakdown of this moral obligation that Mr. Rathbun is talking to you about.

The Witness: Do you mean a detailed statement of the amounts paid to each and every individual?

Mr. Rathbun: I want to know what you are going to pay those individuals out of that four hundred thousand.

The Court: That's apparently what he wants to know.

The Witness: The total amount?

The Court: The total to each individual.

(Testimony of P. E. Spalding.)

The Witness: The total sum paid?

Mr. Rathbun: I want it so we can understand it and cross-examine on it. It should be in detail, four hundred thousand. That's the estimate. That's all we have on that. I want to see it verified.

The Court: You want, then, for him to have information as to how much of the four hundred thousand is paid out and to whom and in what amounts.

Mr. Rathbun: Yes, your Honor, and the method that they are going to get it into the hands of those people. Something more than a promise. If that's the case.

The Witness: What you would like would be the receipts for the payments, I take it.

Mr. Rathbun: I want to know how much you are actually going to pay out of that four hundred thousand. [1918]

The Witness: I may be able within the next few days give you the amounts paid out, the total amount actually paid. Nothing that we are going to pay—

Mr. Rathbun: You don't have to do it within the next few days. You can do it when we bring up this subject exhibit that we are waiting for.

The Witness: I hope we can pay it within the next week, and I will have the exact amount paid out.

Q. Now, you say this sale included growing crops of a million dollars approximately?

A. Yes.

(Testimony of P. E. Spalding.)

Q. What do you base that on?

A. On the value of the growing crops and the amount recovered from it.

Q. Just from memory or something that's been made up in the line of a statement? You wouldn't guess about that subject in selling them, would you?

A. I can approximate it very quickly without having any statements.

Q. Under the terms of this sale is there to be an inventory or a bill of sale of those crops?

A. No.

Q. There is not? A. No.

Q. Will you please give me the crops that were on each [1919] field on the lands remaining after the takings in these cases?

A. No, I can't possibly do that.

Q. How close could you come to it?

A. I can give you an approximation of the sugar that's available for harvesting this coming year.

Q. I want you to take it field by field.

A. I can't do it.

Q. Have you ever done it?

A. I have never done it.

Q. It can easily be done, can't it?

A. By those who are acquainted, by the fields.

Q. Yes. I assume you are acquainted with them when you estimate a million dollars as the price of the crop, the value of it.

A. There are assumptions in error—your as-

(Testimony of P. E. Spalding.)

sumption is in error. I am not familiar with each field and the crops on it.

Q. Well, then, what do you base your million dollars on? A. On the total crop.

Q. Well, how do you know what the total crop is if you don't know the details of the fields?

A. You don't need to know the detail of a field.

Q. You have to add them up to get the total?

A. No, I can get a report and estimate of the total [1920] acreage to be harvested and the approximate estimated sugar per acre.

Q. Yes, but you haven't got that at the present time and you haven't had any such thing before you, is that right? A. No, not in detail.

Q. Do you have any statement before you as to the cost of producing those crops to arrive at a value of a million dollars on them?

A. In making a sale such as this, the cost of producing them has no—is of no effect because the purchaser has acquired those crops in the condition that they exist without having had the expense of producing them.

Q. I understand that perfectly, Mr. Spalding. That is not the purpose of my question. The purpose of my question is to find out whether or not you realized a million dollars for these crops. In other words, you are testifying to this million dollars as the value of the growing crops to show what you gave out in this case in return for the money that you got in this sale, is that right?

(Testimony of P. E. Spalding.)

A. The value of the growing crops.

Q. Yes.

A. What the purchaser figured, how they estimated them, I don't know.

Q. I don't ask you how the purchaser estimated them. That isn't my question at all. Before you'd know how much [1921] Honolulu Plantation Company could value those crops at from the Honolulu Plantation's standpoint, you'd have to know how much it cost to produce them, wouldn't you?

A. If you were going on as a going concern, yes.

Q. Yes, of course.

A. Yes. If you are going on in operating, then that's another matter.

Q. Have you had any such statement before you before you testified to this estimate of a million dollars as to what it cost to produce that million dollars' worth?

A. I can give you the way I estimated, if you'd like.

Q. I asked you if you have a statement that we could look at.

A. No.

Q. You never had?

A. No.

Q. Approximately what would be the cost of producing that million dollars of sugar?

A. Well, you find in these annual reports the amount invested in growing crops, which is the—

Q. I'm asking you. You testified to a million dollars. What would be the expense now to produce that million dollars' worth of sugar?

(Testimony of P. E. Spalding.)

A. The expense that exists to produce that million dollars develops roughly this way: there's about 15,000 tons of sugar [1922] available for harvest—

Q. I didn't ask you how it develops. I'm asking you what it is, if you know, the amount of it.

A. The amount is about a million dollars.

Q. It cost you a million? A. No.

Q. Well, that's what I'm asking you about.

A. It cost the purchaser nothing to—

Q. I'm not asking you what it cost the purchaser. I'm asking you what it cost the Honolulu Plantation Company to produce that million dollars' worth of sugar or cane.

A. Your question, the total value of the crop is nearer a million eight hundred thousand and it cost about eight hundred thousand dollars to produce, leaves you about a million dollars.

Q. Now you want to change your statement from a million to a million eight hundred thousand? A. No.

Q. Now you are saying a million eight hundred thousand is the value of the crop?

A. No, I say a million dollars is the net value of the crop. And you want to get it back to the cost of production, then you've got to take the gross over-all. I'm talking of the net figure.

Q. You didn't say net in your direct examination, did [1923] you?

A. I didn't use the word net.

Q. I didn't hear it.

(Testimony of P. E. Spalding.)

A. I didn't use the word net. I just used the value of the crop.

Q. But it's still just an estimate as far as having any detailed figures in front of you is concerned?

A. Yes.

Q. Now, you said it cost about eight hundred thousand to produce a million eight hundred thousand worth of crops. Have you got any statement in front of you to show the details of how you arrived at that figure, such as you have amended it now?

A. Exhibit 1944 will show the cost of the money invested in growing crops, which you will find is very close to eight hundred thousand dollars.

Q. Is that all you had, what's in the annual statement? That's all you had before you in giving that opinion as to value?

A. That's plenty.

Q. Never mind as to whether it's plenty. Yes or no?

A. Yes.

Q. Will you point out for me on this document marked Honolulu Plantation Exhibit 13-U, where the item of eight hundred thousand dollars can be ascertained? [1924]

A. Here is growing crops for '45, '46, that total.

The Court: Louder.

A. Growing crops total. (Indicating)

Q. That's assets, isn't it?

A. That's the value of the growing crops.

Q. That isn't the cost of the crop?

A. That is the money invested in growing crops,

(Testimony of P. E. Spalding.)

direct charges against the production of the growing crops for '45 and '46.

Q. In other words, you carry the value of the crop on your books where you're showing on your balance sheet the assets?

A. The money invested.

Q. The money invested as being the value of the crop, is that it? A. That's right.

Q. What does the statement on the blue sheet attached to that exhibit on the first page of the blue sheet under the heading of cost of 1944 crop mean?

A. That means the cost of the nineteen forty—if you look at '43 you will find on the end—

Q. I'm looking at '44 now. What's the million four hundred sixty-five thousand odd dollars?

A. You mean the four million four hundred sixty-five?

Q. Yes. Under the heading, cost of 1944 crops.

A. The preparing of the land, cultivating, fertilizing, harvesting, and trash disposal, including cane and raw sugar purchased.

Q. Yes.

A. There's allotted 50,000 tons approximately of raw sugar purchased there; it's included in the figure, and the cost that went into the production of the '44 crop of prior years.

Q. In other words, you are starting way back at the point you first got a lease on a piece of raw land and charging up? A. No, no.

Q. Charging up? Just a minute. Charging up

(Testimony of P. E. Spalding.)

the preparation of the land, the clearing up and plowing of it, is that right? A. No.

The Court: Just a minute, all of you. Let the question be stated. Mr. Witness, when there is an objection coming, I don't want you to answer the question. What is your objection?

Mr. Vitousek: My objection, if the Court please, is that counsel is interrupting the witness when he is answering questions. He is entitled to finish his answer.

The Court: Both of them have been interrupting one another and going so fast nobody could get in between them. [1926]

Mr. Vitousek: If the Court please, we submit that counsel for the Government interrupted Mr. Spalding when he was explaining what those figures were on the blue sheet and starting at something else.

Mr. Rathbun: I thought Mr. Spalding was through. If he wasn't saying something else, what that item of four million odd dollars is made up of.

A. It's all there in writing just what it was made up of.

Q. That says preparation. A. Yes.

Q. Of land. A. Yes.

Q. What does that mean?

A. That means plowing and planting of seed for crop, fertilizer, the setting up of your irrigation system, and all that work for the starting of a crop.

(Testimony of P. E. Spalding.)

Q. Then the four million four hundred sixty-five thousand dollars was all cost that accrued in the year 1944?

A. No. I have been trying to tell you that in the starting of a crop of cane, the cane is from 18, 20, 22 months old at the time of harvest. It's all the expenses that are applied against the growing of that crop from the time it was started until it was harvested.

Q. Just the 1944 crop? [1927]

A. The 1944 crop.

Q. In other words, an original planting, you're going back to the original planting of the crop which will mature in 1944, is that it?

A. All your plant costs, any crop that is planted and harvested. The plant costs are included in the cost of that crop. Then you ratoon it, ratoon costs appear in that cost of the crop also.

Q. Yes. That's true. A. That's all.

Q. That didn't take place in 1944, did it, all those items?

A. Some of them took place in 1942, some in '43.

Q. If it's a 20-year cycle—it went back as much as 20 months?

A. Twenty, twenty-four months. Plantation accounts will run on a crop basis.

Q. Are you through? A. I'm through.

Q. What did you mean by manufacturing expenses in that?

(Testimony of P. E. Spalding.)

A. The cost of manufacturing this crop during the current year '44.

Q. Yes? A. Into sugar.

Q. Just strictly in 1944? [1928]

A. Strictly 1944. The operation of producing that sugar was all done in the calendar year '44.

Q. What are the sundry expenses of three hundred fifty-four thousand odd dollars?

A. Well, what they are, I am sure I don't know. I'd have to go back to the statement to find out what they are.

Q. You can't tell me now? A. No, no.

Q. What can you tell from going back to this statement?

A. Let's see. Disbursements, here's an item, supply and sundry account. I can't tell you what that three hundred fifty—

Q. You can't tell me what it is?

A. No. It includes all the costs charged against the crop except those that are detailed here.

Q. Well, but what are they?

A. I don't know. Maybe hospital.

Q. You haven't any idea? A. No.

Q. You never tried to find out? A. No.

Q. As the President of the Company?

A. No.

Q. You read this report?

A. I should say. But we have a treasurer and accountant [1929] to handle that.

Q. You read this report before it was filed?

A. I read it, yes. Incidentally, I am not Presi-

(Testimony of P. E. Spalding.)

dent of the Honolulu Plantation Company. I am not.

Q. You are President of C. Brewer and Company, though. That's what I mean always when I refer to the President. A. Oh, yes.

Mr. Rathbun: That's all, your Honor.

The Court: Any further questions of the witness?

Mr. Vitousek: We have further questions. Do I understand, now, that Mr. Spalding was asked to produce something in addition?

The Court: Yes, he is coming back at a later date when this Congressional claim matter is about to be cleared up, and at that time he is going to bring with him, in answer to Mr. Rathbun's questions, about the paying out of this four hundred thousand dollars taken out of the sale price to cover pensions and retirement.

Mr. Vitousek: Do you have a note of that?

The Witness: I have a note of that.

Mr. Vitousek: If the Court please, there are a few questions I'd like to ask on re-redirect that were brought up. There is one question I neglected to ask on direct that I'd like permission to ask—on cross-examination — in regard to what was brought out, that certain amounts have been expended [1930] on the lands we claim were covered by this lease of Damon Estate. I want to bring out what those were, which should have been asked on redirect.

The Court: Any objection? In other words, he

(Testimony of P. E. Spalding.)

is asking for permission to ask out of order what he should have asked.

Mr. Rathbun: I get that, but I don't get the subject of what he is going to ask.

The Court: Well, I gather from what he asked that it must be with regard to those things you marked for identification.

Mr. Vitousek: There are two questions, if the Court please, two questions I want to bring out. One is on how the rentals were paid during this period after the expiration of the written lease. The other is the expenditures he meant, what they were for on these lands. That's the nature of the questions that I want to ask.

The Court: All relating to this Exhibit 9-K, the Damon lease?

Mr. Vitousek: Yes, all relating to that.

The Court: Certain letters marked for identification?

Mr. Vitousek: And the letters marked for identification. I had it on my notes.

The Court: Any objection to the out of order questions?

Mr. Rathbun: Well, except the purpose of it, if your Honor please. I don't see any material purpose for it yet.

The Court: Well, let's proceed and maybe we can see it [1931] clearer. I will allow the questions so far as being out of order is concerned.

Mr. Rathbun: I have no objection to that part.

The Court: State the questions.

(Testimony of P. E. Spalding.)

Redirect Examination—(Continued)

By Mr. Vitousek:

Q. Mr. Spalding, yesterday on cross-examination you mentioned spending certain monies on the Damon land. What were they expended for?

A. Expended, were for the planting of new crops of cane over the lands that were leased, and also the improvements to the water supply, flumes and ditches supplying that land. I imagine the expenditure was somewhere in the neighborhood of \$75,000 and covered the planting and the flume repairs, and so on.

Q. Now, was that planting a new crop?

A. That was planting of a new crop. That was the purpose of obtaining the extension of the lease, because your planting generally covers the crop and two to three ratoons for a period of seven to nine years.

Q. Now, was rental paid for the land by Honolulu Plantation to Damon Estate?

A. We continued to pay rent right straight up to 1946.

Q. On what basis?

A. We were billed by the Damon Estate, on the land [1932] remaining, and we paid it quarterly.

Q. The rentals specified in the written lease and rentals specified in the letters are different.

A. Oh, it's paid on the basis of the letters.

Q. Mr. Spalding, in regard to the cost of crops,

(Testimony of P. E. Spalding.)

referring to the 1944 report, as I understood part of the costs were on accrual basis and part on a calendar year basis?

A. Yes, well we—in all our plantations we use a crop accounting basis which includes the cost of bringing that crop to maturity and harvesting and milling it and all the expenses that occur up to the time it is made into sugar.

Q. Now, then, in 1944 the crop would be the crop manufactured into sugar in '44?

A. Manufactured in the calendar year.

Q. '44? A. '44.

Q. But that might have been started a long time prior?

A. It might have been started in '42.

Q. That in addition to preparing land, planting, cultivating, fertilizing, harvesting, trash disposal, is manufacturing expense?

A. Harvesting, transporting the cane to the mill, and manufacturing.

Q. Now, when is that likely to occur?

A. That occurs within the calendar year of the crop. [1933]

Q. And the total—do you have other costs?

A. Your taxes, your rent, your leases, charges, other expenses which would be charged in that calendar year occur annually.

Q. Now, then, the crop that was sold under this agreement of sale on these exchanges of letters to the Oahu Sugar Company, as far as accounting practices would be, is known by what year, calendar year?

(Testimony of P. E. Spalding.)

A. It would be the crops for 1947 and '48.

Q. 1947 and '48?

A. 1946 annual report would show the cost, the money invested in growing crops that were in the field, and they would be for two years.

Q. Then the amount shown in the '44 report, say for the '45 crop, would be with the cost up to the end of the year put into that crop?

A. Yes.

Q. Might have occurred for more than a 12-month period? A. Oh, yes.

Q. Do you know, can you state the amount of those costs that had accrued as of January 1, 1947, for the crops sold Oahu Sugar Company?

A. No, those exact figures have not been prepared.

Q. Could you get those?

A. It would be a little time until the final accounts [1934] are prepared.

Q. When you stated you could give the method that you used in arriving at this million, can you give that method? A. Yes.

Q. Will you do so?

A. Roughly, it is 15,000 tons of sugar available for harvest for production in 1947. The price of raw sugar is \$120 a ton. That means a gross value of a million eight hundred thousand dollars. In order to recover that money, the buyer merely has to pay the cost of harvesting, transporting, milling his cane into raw sugar, and marketing. Those costs would be around 40, \$45 a ton of sugar, which

(Testimony of P. E. Spalding.)

would mean that the cost to Oahu Sugar Company is somewhere between six and seven hundred thousand dollars, to realize a million eight hundred thousand.

Q. So when you were referring to the cost before, from the price, you were not considering the cost accrued?

A. Not the cost accrued. What the buyer was going to get and how much I could get out of it.

Q. Well, what the cost would be to the buyer to put the cane in a marketable condition, the sugar?

A. Yes. He would have a certain small amount, irrigation, in this year on the crop to be harvested at the end of the year. But allowing a very generous figure is at least a million dollars net. [1935]

Q. Was Mr. Merriam continued in the employ of the company?

A. No. He broke down completely in the summer of '44 and he was retired and he is on pension now. He is living in Kula, Maui.

Q. After he retired, do you know when was that—the summer—

A. Well, he left in the summer of '44 to go to Kona at the time to regain his health. And he was only there a short time. Things were apparently very bad. He came back to Honolulu. He was in the hospital quite a bit of time. and, well, he became mentally deranged.

Q. What hospital? A. Kaneohe.

Q. And later discharged?

A. Later discharged. They performed one of these new operations, an incision of the brain, and it seemed to bring him back somewhat, so he is quite normal and living comfortably on Maui.

Mr. Vitousek: If the Court please, except for possible re-redirect on further testimony brought out by Mr. Spalding, when he comes back, why we have no further questions.

The Court: All right.

Recross Examination—(Continued)

By Mr. Rathbun:

Q. When did Mr. Merriam actually leave the employ and cease his duties with C. Brewer and Company?

A. He was retired January 1, 1945.

Q. Up to that time he had been carrying on as usual?

A. No, he ceased his duties completely six months before that.

Q. That would be in the middle of—

A. '44.

Q. —of 1944?

A. We had him hospitalized at that time and we carried him on our full salary roll until the end of the year.

Q. But up to that time he had been carrying on his duties with C. Brewer and Company?

A. Rather intermittently.

Q. Well, now, what do you mean “intermittently?”

A. I mean he was there occasionally and he

(Testimony of P. E. Spalding.)

had been off and sick and in the hospital. He'd be away for two and three weeks at a time.

Q. But he was able to carry on his duty that he was assigned to, is that it?

A. Not very well.

Q. Well, you allowed him to work, didn't you?

A. We tried to keep him at work. We tried to keep him, mentally O.K., to keep him there. [1937]

Q. You allowed him to operate as the manager of the real estate department, didn't you?

A. We allowed him to retain that title.

Q. You didn't change his title as far as the public was concerned? A. Certainly not.

Q. You didn't give them any notice of the fact that he was in any condition other than that of a competent man, did you? A. We tried not to.

Mr. Rathbun: That's all.

The Court: Very well.

Mr. Vitousek: If the Court please—

The Court: You are excused, subject to being called.

Mr. Vitousek: May he be excused?

The Court: Yes, I just excused him.

(Witness excused)

Mr. Vitousek: As far as the Plantation Company is concerned, we have no further evidence except what may be occasioned by what may develop and cause an answer, that may require testimony from others if this exhibit comes in, this Exhibit 1. And except for that, why we would be ready to close.

The Court: Well, that would come in on rebuttal, if at all, would it not?

Mr. Vitousek: Well, it could be. I am frank to say that [1938] these exhibits coming for identification, coming in for identification, would seem to me that properly speaking we should wait until they are in and then offer rebuttal, although we have gone out of order in some of it. But I say, it's just reserving in regard to that question. Otherwise, we are ready to close. And what other redirect may be caused on further cross-examination of Mr. Spalding.

The Court: Have you abandoned your request to be allowed to recall Mr. Austin?

Mr. Vitousek: If the Court please, Mr. Austin is out of town. I might state what we proposed to recall him for was simply to introduce a copy of that black book he had on the stand. It's been read in the record but apparently read so many times that I couldn't find a consistent figure. That's all we were going to recall him for. But I don't think it's important enough to hold the case open. If he's here, I'd just like to put that in. He was called to the other islands on duty and that was the only purpose of recalling him, is to have a copy of that page put in the record.

The Court: Well, then, subject to Mr. Spalding being recalled when this Congressional claim matter is again before us, and the retirement business, you are resting?

Mr. Vitousek: That's right, if the Court please. And reserving the right, of course, that I imagine

will come in rebuttal, to answer on the claim if it's necessary. [1939]

The Court: How do you stand?

Mr. Rathbun: We'll take a very short time. I estimate we'll finish in one morning court session. I therefore ask that we be allowed—we are operating under the handicap of no transcript. We have ordered it but it seems that it can't be gotten out. And I'd like to go over the material that we have from our notes, which we'll have to do, and I think I can assure your Honor that we can finish Tuesday morning with everything that we have in the line of evidence.

The Court: That's good to know. So far as planning is concerned with regard to other cases, supposing the Government finishes Tuesday morning, how much rebuttal do you think you will have? In other words, I am trying to get an idea how much longer this case is going to take.

Mr. Vitousek: Of course, if they finish it in one morning, I don't imagine we'll have very much, if any.

Mr. Rathbun: I'll tell you frankly. There's no use of hiding it. We are offering no evidence on the severance claim. It's strictly on the improvements, part of which we concede and part of which we don't agree with their values on.

Mr. Vitousek: On that basis, if the Court please, I doubt if we'd have any rebuttal. My only case of rebuttal is in case there was something on the severance claim. Either in that or on the matter in connection with it, like going into the reports.

The Court: Well, there's an expectation, then, that we might finish at least by Wednesday?

Mr. Rathbun: Yes.

Mr. Vitousek: I might state to the Court, it's going to be very difficult. I'm having the same difficulty Mr. Rathbun has. We want to get the transcript of certain of these witnesses, and the reporter is busy. But I think we would like to finish it.

The Court: The Court is busy and the court reporter is busy, and the Court is going to keep him busy. The Court is having a little difficulty with the reporter situation. But there is something else I was going to ask. Will you be able to tell me on Monday what expectation there is of getting an accurate copy of this Congressional claim before us?

Mr. Vitousek: Well, if the Court please, I could on Monday afternoon. Tuesday, as Mr. Rathbun is suggesting. I want to go to one of the other islands for a little rest perhaps and perhaps be back Monday morning, but I will know by this afternoon, I'm quite sure.

The Court: I didn't understand you were asking that it go over until Tuesday.

Mr. Rathbun: Yes, I suggested that because we've got to go over all this testimony in our notes, which will take some time.

The Court: On that Congressional claim confusion, I am wondering if we are going to get into more confusion. I can [1941] conceive of it being possible that you would produce an accurate

copy of what was filed with the Committee of the last Congress and then later contending that during the course of that Committee hearing the claim certain amendments were made. Then we will have to send back to Washington for those.

Mr. Vitousek: That's just what I anticipated.

Mr. Rathbun: It won't, as far as I am concerned. If they will admit that this document was filed, which I think is going to be the case, then at a later date they filed something new before the Senate Committee, which is I think this situation, I don't care anything about that. I want to know whether this was filed. Of course, if this was not filed and a new one in its place was filed, then we'll have to see what the difference is, whether there is a material difference.

Mr. Vitousek: That's where we may get into difficulty. I have talked with counsel to find out the purpose. We might iron it out. But if it develops on the accuracy, we may be in this difficulty. As I understand on these matters, when a document like this is admitted, it is admitted subject to correction. In other words, they reserve the right to substitute matters they may find incorrect. And that is what must have been done, because I find differences in copies that are here. If that is so, it would be the final correction, the final correct one is the document Congress receives, as I understand it, and that's where it may take a little time. [1942] It may be that we can save that time. That's a confusion I see.

The Court: I don't know, but there must have

been something that was originally filed with Congress and that something is what Mr. Rathbun apparently wants.

Mr. Rathbun: I don't know. I'm not saying. The way the situation looks to me, I think this document was filed with the House of Representatives. And I think Mr. Kay will agree with me, as a guess on that. Then when it got into the Senate, you filed some kind of an amendment or extension to it.

Mr. Vitousek: If the Court please, I don't like to appear as not knowing but I didn't know anything about that claim. All I know is what I gather from what we call hearsay evidence.

Mr. Rathbun: That's all I know about.

The Court: That's apparently the stage in the situation which we must leave it until you get some further specific, accurate information. All right, we'll adjourn this case until Tuesday at nine.

(The Court adjourned at 11:10 o'clock, a.m.)

Honolulu, T. H., January 14, 1947

The Court: Civil No. 514, United States of America versus 257.654 acres of land, more or less, and others; case called for further trial.

The Court: Are the parties ready?

Mr. Vitousek: Ready.

The Court: I believe Mr. Spalding was to come back with—

Mr. Rathbun: He furnished the other two things. One was a breakdown and the other was an agreement, a sale agreement.

The Court: But there was one other thing you asked him to bring, a pension detail.

Mr. Rathbun: He said that will take several days.

The Court: That's right. Now, what is the progress on getting a copy from Washington of what is filed with Congress?

Mr. Vitousek: Well, I was informed by telephone yesterday that it was mailed Saturday.

The Court: Air mailed?

Mr. Vitousek: Air mailed. So it's in the hands of Uncle Sam.

The Court: It ought to be here today, shouldn't it?

Mr. Vitousek: He said it would be here yesterday—in a day or so.

Mr. Rathbun: I think we can proceed and come back to that.

The Court: All right, subject to those two matters being [1944] reserved, all the other details that were left pending in your case are cleaned up now, except those two?

Mr. Vitousek: Yes, if the Court please.

The Court: All right. You rest, subject to those two points?

Mr. Vitousek: Yes.

The Court: And you, Mr. Rathbun, may start your case at this time.

Mr. Rathbun: **Mr. Child.**

The Court: Do you have an opening statement you wish to make?

Mr. Rathbun: No, your Honor.

JOHN FRANCIS CHILD, JR.,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Rathbun:

Q. Will you state your name, please?

A. John Francis Child, Jr.

Q. Where do you live, Mr. Child?

A. I live at 1334-A Pensacola Street, Honolulu.

Q. Were you born in Honolulu?

A. I was.

Q. How old are you? A. I am 34. [1945]

Q. What is your general education?

A. I was educated in the schools in Hawaii, went to Punahou Academy, took a college preparatory course, and attended the University of Pennsylvania, Wharton School of Commerce, where I majored in real estate and appraising; graduated with Bachelor of Science, in Economics, in 1935; taken certain case study course in appraising given by the American Institute of Real Estate Appraisers at the University of Michigan, Detroit, in 1940.

Q. Have you had connection with any local institutions or business houses during your career?

A. Upon graduation from school I worked for the Union Trust Company of Honolulu in connection with reorganization of their real estate department, after it was taken over by the Bank Examiner. Following that, I set up my own office.

Q. Did you do any appraisal work in connection with that Union Trust work?

(Testimony of John Francis Child, Jr.)

A. Yes, we revalued properties in connection with the mortgage loans.

Q. Properties located where?

A. In and around Honolulu.

Q. All right. What next? What years were those that you were with the Union Trust organization?

A. Latter part of 1935 and the first part of 1936; in 1936 I started my own business in which I did appraisals for [1946] clients and various types of business research work.

Q. Have you been in the real estate business, general real estate business?

A. I have been in the real estate business since 1940.

Q. Of what nature of appraisals did you work on when you went in business for yourself?

A. During the early periods, why I did chiefly residential appraisals. After the war started I became a staff appraiser for the United States Navy Real Estate Division, appraised property being taken in connection with various acquisitions by the Navy, the majority of which were agricultural properties, small farms, cane lands, waste land and fish ponds.

Q. Are you a member of any boards or local committees pertaining to real estate?

A. I have been a member of the Honolulu Realty Board since 1937.

Q. Do you occupy any office in the Realty Board at the present time? A. I am the President.

(Testimony of John Francis Child, Jr.)

Q. All right. What else?

A. I have been on the Board of Directors for several years and a member of the Appraisal Committee of the Honolulu Realty Board during 1946.

Q. Anything else? [1947]

A. Well, I have been Chairman of the Educational Committee. I have been—

Q. What is the Educational Committee?

A. The Educational Committee of the Honolulu Realty Board, education along real estate lines of the members.

Q. Yes?

A. I have been a member of the Chamber of Commerce, Vice Chairman in their Redevelopment Committee. I have been a member of the Land Planning Committee of the Territorial Planning Board while it functioned between 1939 and '41.

Q. Anything else?

A. I am a member of the Society of Farm Managers and Rural Appraisers, which is a national organization, American Marketing Association, and the American Statistical Association, all national organizations.

Q. Name some of the people that you had made appraisals for during the period since 1936?

A. I have made appraisals for the Honolulu Finance and Thrift Company, the Discount Corporation, Pioneer Building and Loan Association, Mid-Pacific Institute, Government employment, Land Department of the U. S. Department of Justice, Bureau of Yards and Docks, U. S. Navy,

(Testimony of John Francis Child, Jr.)

U. S. Army Engineers Real Estate Division, Honolulu, U. S. Federal Public Housing Authority, Honolulu, Attorney General of the Territory of Hawaii, Board of Water Supply of the City and County of Honolulu, City and County Attorney.

Q. In Civil 521, are you familiar with parcels 2-A and 2-B in that case?

A. If you mean the two kuleanas belonging to the Honolulu Plantation Company, I am.

Q. I'm trying to find them on here but I can't find them yet. (Referring to a map) What were the areas of those two pieces that you are familiar with owned by the Honolulu Plantation Company?

A. Parcel 2-A is approximately 47 hundredths of an acre; parcel 2-B, .107 acres.

Q. Will you step down here, to save time? May he step down here, to save time?

The Court: Yes. You have in hand the map attached to the petition?

Mr. Rathbun: Yes, your Honor.

Q. Point out the two pieces that you are referring to?

A. This, a long narrow part over here (indicating) is 2-A, as I understand it, and this parcel is 2-B, this being .47, 47 hundredths of an acre, and this being .107, .107 acres.

Q. And those are the only areas on that map that you are looking at of that acreage, is that right? A. That's right.

Q. And it is shown on Exhibit B attached to

(Testimony of John Francis Child, Jr.)

the petition for condemnation in that case, is that right? [1949]

A. That's right.

Q. Will you describe those two pieces of property, Mr. Child?

A. 2-A consists of a long narrow kuleana, averaging probably 35 feet in width and approximately 600 feet long. It extends from the base of the rise of McGrew Point into the swampy area adjacent to the point. A small portion of it is dry arable land, and the remainder is in swamp and reeds.

Q. What proportion of it is in swamp? Or was in 1944?

A. I have estimated that about .273 acres would be in the swamp and about .18 hundredths acres would be where there was fresh water seepage suitable for wet agricultural and about .017 acres of dry arable land.

Q. When were you on these properties?

A. I was on these properties in February, 1944.

Q. Did you see them after that, in July of '44?

A. I saw them a number of occasions after that, to and including July, 1944.

Q. From your knowledge of those properties, did you form any opinion as to their fair market value in the month of July, 1944?

A. I did. The value of the property known as 2-B being approximately a hundred dollars.

Q. What about 2-A?

(Testimony of John Francis Child, Jr.)

A. I haven't described 2-A. Shall I go ahead with the [1950] description of that?

Q. You described 47 hundredths of an acre?

The Court: He has been talking about 2-A.

A. 2-A is a hundred dollars, in my opinion, the fair market value.

Q. Both of them a hundred dollars, is that it?

A. No, 2-B I have given a value of seventy-five dollars.

Q. Did you have an opinion at that time as to the highest and best use for which this property could or should be used?

A. In considering the highest and best use of the two kuleanas, the 2-A was a long, narrow, portion which did not lend itself to any independent use other than the use of the land adjacent to it. 2-B was a very small area which also only lent its use, lent itself to the uses of the surrounding lands.

Q. Will you give the Court your reasons for those valuations, what you base them on?

A. In connection with 2-A I considered that the area of arable land was usable together with the adjacent areas, arable land, and the portion which was suitable for wet agricultural was similar to a lily pond area adjacent to it, and the balance of 2-A was unusable land without further improvement and was swamp. I gave the arable land \$700 an acre, the wet agricultural land \$400 an acre, and the swamp land nominal \$50 an acre. These rates are based upon \$700 an acre, the highest and best use of the other land in McGrew Point for pur-

(Testimony of John Francis Child, Jr.)
poses of subdivision, [1951] and the current or the price at that time of wet agricultural land, which averaged \$400 an acre.

Q. Well, these lands taken alone, in your opinion, did they have any subdivision value standing alone by themselves? A. They did not.

Q. How were they located in relation to the level of the street, the highway, Kam highway?

A. Parcel 2-A was located below the level of Kam highway.

Q. How far below?

A. Approximately three to four feet.

Q. All right.

A. Parcel 2-B was located above Kam highway, some 15 feet probably.

Q. What about access?

A. They had no access other than the usual access accorded the kuleanas in the Territory.

Q. What's that?

A. A trail over other property. They had access over other property but it was limited.

Mr. Rathbun: May he step down again, your Honor?

The Court: Yes.

Q. Referring to Civil Suit 529 now, are you familiar with parcels F-1 and F-2 in this proceeding, Civil 529? A. I am. [1952]

Q. Will you point them out on the map marked Exhibit D attached to the motion for an order amending the petition in this case, which motion was filed September 17, 1945?

(Testimony of John Francis Child, Jr.)

A. Parcel F-1 is this parcel with 77 hundredths of an acre in area. (Indicating) Parcel F-2 is this parcel down here.

The Court: Containing?

A. .857 acres.

Q. Now, are those two parcels, F-1 and F-2, contiguous to each other or are they removed from each other?

A. They are removed from each other.

Q. How far about?

A. One is in the center of, near the center of the land being taken, makai of the highway.

Q. How many feet would you estimate it?

A. Roughly 650 feet.

Q. Now, what intervenes between them?

A. In between are lands of other owners.

Q. What character of lands, large tracts or kuleanas or what?

A. Chiefly a large tract of land. There are some other kuleanas belonging to McCandless Estate.

Q. Do you know whether or not those other lands intervening are separate ownerships from the ownership of F-1 and F-2? [1953]

A. They are separate.

Q. And who owns F-1 and F-2, if you know?

A. The Honolulu Plantation Company.

Mr. Rathbun: Your Honor is familiar with this in memory where it is located, 529?

The Court: I'd have to see the map to refresh

(Testimony of John Francis Child, Jr.)
my recollection. Let me have that exhibit. (Mr. Rathbun hands a map to the Court)

Q. Will you describe, first, when did you see that property, Mr. Child?

A. Well, I visited the property for the first time in July, 1945, and several times subsequent to that. The last time being December, 1945.

Q. What is the date that the Government took the property? Do you know? Well, the suit was filed October 4, '44. Did you see it at that time?

A. I had not seen the property at that time.

Q. And what month was it that you saw it after that? A. In July, 1945.

Q. Did you make any investigation to find whether the character of the property had changed any in the meantime from 1944? A. I did.

Q. What did you find?

A. At that time the Navy had taken possession of the [1954] property.

Q. At what time?

A. In July, 1945. It was occupying it.

Q. Yes?

A. The character of F-1, land after investigation was found to be approximately the same. One of the buildings, the pump house, was still on the property. The character of F-2 was approximately the same with some fill having been pushed down on it by bulldozers.

Q. What improvement did you find on the property when you saw it?

A. At the time I visited the property there was

(Testimony of John Francis Child, Jr.)

a pump house built of corrugated iron with concrete foundation and having an area of approximately 540 square feet; the roof siding with corrugated iron; and there was a concrete floor below the level of the surrounding ground which was heavy concrete for the purpose of mounting pumps.

Q. Were there any pumps or machinery in the building?

A. At the time I visited there was a pump in operation by the Navy.

Q. Did you find out whether or not that was the same pump that had been in there when the property was taken in 1944?

A. I asked the Navy person in charge, who said that it was a Navy pump. [1955]

Q. Not the same one, then?

A. Not the same one.

Q. All right. Go ahead and describe what else you found on the property?

A. My investigation revealed that there were—there was a dwelling on the property of approximately 480 square feet.

Mr. Vitousek: I didn't get that first part, a building?

A. A dwelling used in connection with the attendant for the pump when the pump was being used. And several miscellaneous storage sheds which had been removed.

Q. Did you get any information as to how big those sheds had been before they were removed?

A. They were small wooden sheds. The infor-

(Testimony of John Francis Child, Jr.)

mation that I obtained, they were miscellaneous sizes. I don't know how large they were. The information was secured from secondary sources. I didn't see the sheds.

Any thing else on the property?

A. The property also had some four wells. These wells were connected to the pump house by a tunnel arrangement.

Q. Describe the wells in a general way as you saw them?

A. I didn't investigate the wells. That is, I didn't look into them. I merely noted that they were there.

Q. Did you know the purpose that they had been used for before that?

A. In talking with Honolulu Plantation office employees, [1956] I determined that those wells had been used in connection with the irrigation system for that property and property above, that when a source of water was available from the Hawaiian Electric Company that the wells were no longer used in connection with this irrigation system.

Q. Which tract were those wells located on, F-1 or F-2?

A. They were located on F-1.

Q. Was there any access to these properties, F-1 and F-2?

A. The access at the time I visited was over a road across other lands belonging to the Bishop Estate from the Kam highway.

Q. Well, what kind of road, dedicated road?

(Testimony of John Francis Child, Jr.)

A. No, this road was merely a road put in for the convenience of the plantation. It was not a dedicated road and was titled, belonging to the Bishop Estate. It did belong to the Bishop Estate; at the time I visited it, it was after the Navy had filed.

Q. Did you form an opinion, looking at this property, as to its highest and best use in 1944?

Mr. Vitousek: If the Court please, this question says "the property." I don't know whether it was meant to cover the land or the improvements.

Mr. Rathbun: The property as a whole.

Mr. Vitousek: Then we wish to interpose an objection. [1957] If it is meant to cover the wells and other such improvements, this witness has not been qualified to testify in regard thereto. His qualifications relate first to a real estate man, as to the lands, to the buildings perhaps. But in this particular case it is shown that he knows nothing about the buildings except what he was told, with the exception of a corrugated iron house over the pump; that he made no investigation of the wells except to see what they were on the surface. As to what they were underneath, he is not qualified as an engineer to give any opinion in regard to these particular wells. In view of the statement that it covers everything, we raise the objection.

Mr. Rathbun: He doesn't have to be an engineer to testify on that subject. The very fact that he is not an engineer, a real estate man, the ques-

(Testimony of John Francis Child, Jr.)

tion of the highest and best use will bring out that he disregarded the wells as a real estate proposition.

The Court: On the point of the wells, I am inclined to think that the objection may be well taken. However, I am going to overrule it and the witness may answer the question, and you may have an exception.

Mr. Vitousek: Yes.

The Court: Do you have the question in mind?

The Witness: I do.

The Court: You may answer it. [1958]

A. I have formed an opinion. In my opinion the fair market value—

The Court: Excuse me. The question was the highest and best use.

A. I'm sorry. The highest and best use of the property, in my opinion, based upon the present dominating market for that type of property, would be as a kuleana home site, possibility of using a portion of it for gardens, using the various buildings for dwelling purposes.

Q. Assuming that there were four wells on that property, one of them 175 feet deep, one 180 feet deep, one 76 feet deep, and another one 176 feet deep, those wells that previously had been used by the Honohulu Plantation Company in connection with their irrigation system of the surrounding lands, did you form an opinion in connection with the highest and best use as to whether or not those

(Testimony of John Francis Child, Jr.)

wells would add anything to the value of the land as such?

Mr. Vitousek: Now, if the Court please, we renew the objection. This is calling for the opinion of the witness on value, and he is not qualified, he has not been qualified as a witness capable of giving any value to these particular wells.

The Court: Well, from a real estate point of view can not he testify as to whether or not in his opinion the existence of these wells on this property do or not enhance the value of the property? [1959]

Mr. Vitousek: Well, that goes into value, if the Court please, and he is not qualified to testify as to the best use as to the character of these wells. And while there are other reasons that perhaps would amount in the examination—he is not qualified as an engineer.

The Court: Well, I think those factors may go to the weight of his testimony. I am going to overrule the objection and you may have an exception. Do you have the question?

The Witness: May I have that?

(The reporter read the last question.)

A. I considered that the wells would not add anything to the value or enhance the value of the land because the highest and best use of the land was for home site purposes and the water required to be used on the kuleanas would be very limited.

Q. Now, from the information that you had, did you form an opinion as to the fair market value

(Testimony of John Francis Child, Jr.)

of these two pieces of property, the land and the improvements on them, in October of 1944?

A. I did.

Q. Will you give us that opinion, please?

Mr. Vitousek: Now, if the Court please, that goes beyond the wells to property on the land that he did not see, a dwelling house, the other buildings. The witness said he got his information from hearsay. [1960]

Mr. Rathbun: It's perfectly proper, a perfectly proper way to get information. It goes to the credibility.

Mr. Vitousek: We object to the question as presented to the witness. It's shown that he cannot give an answer to the question based on hearsay.

Mr. Rathbun: I'm not going to waste much time on it, Judge. Mr. Austin didn't testify to any value of those sheds at all.

The Court: That's the only substantial thing that he didn't see is these sheds, as Mr. Rathbun points out.

Mr. Vitousek: I may have missed it, but I thought the dwelling was there.

Mr. Rathbun: The dwelling, yes.

The Court: I understood him to say that the dwelling was there but it was only the sheds that had been removed, is that right?

The Witness: The sheds had been removed.

Mr. Vitousek: Not the dwelling?

The Witness: Not the dwelling.

The Court: Well, I wondered at the time

(Testimony of John Francis Child, Jr.)

whether he meant that to apply to both, but I took it he meant just the sheds had been removed. I am going to overrule the objection and he may answer the question, and you may have an exception. Do you have the question?

The Witness: Yes, the opinion of value. [1961]

A. My opinion of the fair market value of the kuleana with the improvements thereon is thirty-five hundred dollars.

The Court: For both?

A. For F-1. And four hundred dollars for F-2.

Q. How much on F-1?

A. Thirty-five hundred.

Q. Well, you mean that's over-all?

A. That's the over-all value.

Q. And on F-2 four hundred dollars?

A. That's correct.

Q. Now, will you tell us your reasons for those valuations, the things that you took into consideration in arriving at that opinion?

A. In reaching the value of the land in F-1, I took into consideration the only near-by adjacent property that had been sold, the only sale, approximately 9.916 acres on September 16, 1944, document 75152, Oahu Beach and Country Homes, to J. B. Hilario, \$14,000, approximately \$1,347 an acre.

Q. And what price per acre did you use in arriving at the value?

A. In making adjustments for size and usability, I used a thousand dollars an acre.

Q. How far away was that sale that you just referred to?

(Testimony of John Francis Child, Jr.)

A. It's approximately 800 feet, it's directly across the stream from F-2 and some 800 feet from F-1. [1962]

Q. All right. Go ahead. Anything else that you took into consideration?

A. I considered that it was an isolated kuleana with only kuleana access, that it had a small size, uneconomic for farming purpose, but satisfactory for a home site, dwelling home site. In connection with F-2, the land is somewhat similar to the sale cited. I used a thousand dollars an acre for the portion of the land which was considered similar; that portion along the stream, I used \$250 an acre.

Q. So that on the land itself, on the breakdown you arrived at a higher figure than Mr. Ewart did? Did you consider his testimony in this case?

A. I did.

Q. He testified to \$976, I believe. All right. Seeing that you started on the breakdown, tell the Court how you arrived on the rest of it?

A. I didn't get the question.

Q. Tell the Court how you arrived at the rest of the valuation in making up your thirty-five hundred dollars on the one piece?

A. The pump house I gave a value, replacement cost, \$4,320, excluding any pump or other equipment; considered it 58 percent good, giving it a value of approximately \$1,800. The dwelling, I am informed it was built in 1926, 480 square feet, replacement cost, \$2,400. [1963]

Mr. Vitousek: If the Court please, I'd like, if

(Testimony of John Francis Child, Jr.)

possible, to get that value read back, on the pump house. I got eighteen hundred.

The Court: That's right. Just supposing you wait until he finishes this dwelling price. Then we can go back. On the dwelling you considered \$2,400 as replacement cost?

The Witness: That's correct.

The Court: Then what?

A. I depreciated it, considering it 32 percent good, a value of \$768.

Q. What did you base your depreciation upon?

A. The life of the building and observation.

Q. That's observed depreciation as well as theoretical? A. That's correct.

The Court: Now, Mr. Vitousek, you want the answer on the pump house read back?

Mr. Vitousek: Yes, where he started with replacement cost, the amount of it.

(The reporter read back the previous answer referred to.)

By Mr. Rathbun:

Q. All right. Proceed. What else?

A. The miscellaneous storage out buildings, I gave a nominal value of a hundred dollars from the description that I could get on it.

Q. Yes. [1964]

A. The wells I considered of nominal value, ten dollars, giving a total of \$3,446 which I rounded to \$3,500.

Q. Now, what about F-2, did you form an opinion of that?

(Testimony of John Francis Child, Jr.)

A. F-2 had no improvements on it and I gave it a value for .218 acres used for growing vegetables, a thousand dollars an acre, \$218; and .639 acres of idle land not as favorable along the stream, \$250 an acre, \$160; total of \$378 rounded to \$400.

Q. Now, on this same Civil suit, 529, Mr. Child, did you observe any irrigation ditches?

A. There were irrigation ditches running across the property above the land above the Kam highway.

Q. I show you Honolulu Plantation Exhibit No. 3 and call your attention to the upper lefthand corner where a black line has been drawn by Mr. Austin when he testified in this case, and within the circle of that black line is a red line. Is that about the location of the ditch that you saw on the property? (Showing exhibit in evidence to the witness)

A. I believe roughly that's the location.

Q. Did you make an appraisal report on 529 as to the fee ownership? A. I did.

Q. For the U. S. Navy? A. Yes.

Q. Will you tell us how you treated those ditches in [1965] valuation that you made of the fee land other than that owned by Honolulu Plantation Company?

Mr. Vitousek: If the Court please, we have the same objection that we made in regard to the wells. He has shown no qualification to give any evidence regarding value. And this apparently is a preliminary question for that purpose.

(Testimony of John Francis Child, Jr.)

Mr. Rathbun: Didn't you say, Mr. Child, that you did value plantation land, cane land?

The Witness: I have.

Mr. Rathbun: With irrigation on them, irrigation system?

The Witness: That's correct.

Mr. Rathbun: Previous to this, I mean.

The Witness: That's correct.

Mr. Vitousek: We still maintain he hasn't been shown to be an expert valuing irrigation ditches.

The Court: The objection is overruled. You may have an exception.

Q. Tell the Court in general the nature of that ditch, how it was built, constructed? Did you hear Mr. Austin's testimony? A. I did.

Q. Did you agree with him in the description of the ditch substantially? A. Yes.

Q. Now how did you treat that in your valuation of the [1966] fee of this land?

A. I considered that cane land, having been improved, being used for the growing of sugar cane, had a value which included the value of ground, improvements, any moveables, and considered that value to the owner, considering the leases, I considered that there might be certain rights against the owner, but I valued it as part of the fee.

Q. In other words, was it your conclusion that the value of the ditches went with the land itself, to be of no use to anyone else, is that right?

(Testimony of John Francis Child, Jr.)

Mr. Vitousek: If the Court please, to that we object as a leading question. I think if he said he considered them as a whole, as I understand the question now, he will give any other consideration to the owner as a whole, the land and improvements.

The Court: Well, the last question definitely is leading.

Mr. Rathbun: It is leading.

The Court: However, I think it was a summation of what the witness had just said, as I understood him, if I understood him correctly.

Mr. Vitousek: Well, if the Court please, with all due respect to the understanding, it wasn't my understanding and I think the witness should give his understanding without leading questions.

The Court: The objection is good, on the grounds of [1967] leading.

Q. Well, take the Court's suggestion and give your understanding.

A. The ditches and all contributing irrigation, moveable equipment, have no value in my estimation by themselves, but as a part of the land, and that the leases provide certain arrangements between lessor and lessee, but that in considering the real estate to them they are inseparable.

Q. Is that your opinion?

A. That is my opinion.

Mr. Rathbun: I think, your Honor, it might be well for us to clarify and bring out the situation in regard to this. Your Honor hasn't read these leases, I take it.

(Testimony of John Francis Child, Jr.)

The Court: No, I haven't.

Mr. Rathbun: We have very nice little question here that your Honor will have to decide. This is a good point to understand this particular feature of it.

The Court: All right.

Mr. Rathbun: You have two leases covering this 529 over which these ditches run. One of them is with the Oahu Railway and Land Company and by assignment to the Hawaiian Land and Improvement. The other is with the Bishop Estate. The Bishop Estate has a provision in regard to condemnation or sooner determination of the lease that the improvements which were put on after the date of the lease, or the effective date of the [1968] lease, shall be divided between the lessor and the lessee, as the lessee's interests may appear. Now, I suppose that means referring to the expired part of the lease and the unexpired part. Now, as to O. R. & L., the lease has substantially the same provision except that they have a right to withdraw 200 acres on giving six months' notice. What will happen to the ditch in case they should have withdrawn is something we will have to argue later. But this particular point is that that also has the same, substantially the same provision in the withdrawal clause and in the condemnation clause, that they will be divided, the improvements that were put in after the date or effective date of the lease, having in mind the status; that means, no doubt, the unexpired portion of the lease. In other words,

(Testimony of John Francis Child, Jr.)

if four years had gone by, which is the case here, on the 25-year lease, the landlord would be entitled to four twenty-fifths and the lessee would be entitled to the rest of it. Now, there is no use fooling around about it. That's the situation. Now, the construction of that clause—divided. If this lessee is entitled to improvements and that's the question your Honor will have to pass on, of course, there is no use of evading it. We should understand it and know what we are heading into in the line of what is to be decided. Technically we could take the position that that clause means that they can't recover from us. They will have to go after the landlord for it. I am not so sure of that myself when it [1968] uses the word "divided." I am not so sure that your Honor can't divide it or the Government can't do it, in tendering money for that separate payment for that kind of property. Now, I am calling your Honor's attention to that, to pose the question to you, and that is the question. I am not disputing that there are improvements here that at least going with the land might add something to the value of the land. We might as well be frank about it. But how it is going to be disposed of is something else. Now, I am interested in this, if your Honor please. I'd rather not have this put down because it develops some other owners.

The Court: All right.

(Discussion off the record.)

The Court: Now, on the record again.

(Testimony of John Francis Child, Jr.)

Mr. Vitousek: Now, if the Court please, counsel stated his position. Our position is quite a bit different. In the first place, the law of this Territory—that's what governs in this case—requires the land and improvements to be valued separately. And this is what was done in the witnesses' presentation here. If the witness testified, as this one did, that he considered the whole, he is not coming within, he is not complying with the law, because he gives your Honor nothing to base a division upon. Whether or not these owners have settled, have arrived at an agreement, a tentative agreement, has nothing to do with this case whatsoever. If they settle with someone else, they [1970] have no right to settle the rights of this defendant that's before the Court. The division, as authorities will hold and as the witness testified, is not on a basis of time. In other words, if the lease is for 25 years and five years have expired, you don't take the value of the improvements and divide four-fifth into one and one-fifth to the other. As their interests may appear means what would those improvements be worth at the end of the lease. And that's what the landlord would be entitled to; the difference is what the tenant would be entitled to. In order to get that right, you take the value at the time and the value at the end of the lease. You bring back that value to present worth and the difference is what the tenant gets.

Now, that roughly is our position in this matter. The Territorial statutes, which is a matter of pro-

(Testimony of John Francis Child, Jr.)

cedure which the Federal rules do not cover in condemnation cases, must be followed. In the first phase of the case is what we are dealing with now, as we divided it into two phases. It must show the value of the land and the value of the improvements separately.

Mr. Rathbun: There is no argument on that at all.

The Court: Well, the only point of pausing here was to understand the legal problem involved. I recognize that you differ on it. We can thrash it out later. The Court will eventually have to rule upon it.

Mr. Rathbun: Your Honor has a right, as a Court, to use [1971] the well-known tables that you can see fit when the time comes.

The Court: All right.

Mr. Rathbun: As I understand the law.

The Court: We have been operating an hour. We will take our usual recess at this time, and the reporter has been asked to report to Judge Metzger's court for a few moments.

(A short recess was taken at 10:20 a.m.)

After Recess

By Mr. Rathbun:

Q. Mr. Child, have you examined and are you familiar with the property involved in Civil 535 pending in this Court? A. I am.

Q. Are you familiar with the property owned by the Honolulu Plantation Company?

(Testimony of John Francis Child, Jr.)

A. I am.

Q. Involved in that suit? A. I am.

Q. Will you step down here a moment and point out on Exhibit B attached to the order amending the petition for condemnation, filed August 27, 1945—

A. The property of the Honolulu Plantation is up in here. (Indicating on a map)

Mr. Rathbun: I'm not familiar with the Court files as I am with mine. I can't find them.

The Court: What is it particularly that you are looking [1972] for?

Mr. Rathbun: Just to point out on the map that has the Honolulu Plantation piece on it.

Q. How many acres involved in this piece of property involved in Civil 535 owned by the Honolulu Plantation Company?

A. I converted it to square feet. Approximately 119,006 square feet.

Q. Look at your record and see if you can give the acreage, to identify it on the maps. I don't think there's any question about it. It's 2.732 acres? A. That's correct.

Q. When did you see that property first?

A. I have seen the property over a period of years and I inspected it with the purpose of estimating its value in several times in June 1945 and September 1945.

Q. You had seen the property before that, had you? A. I have.

Q. Familiar with it? A. Yes.

(Testimony of John Francis Child, Jr.)

Q. Will you describe the property?

A. The property is located on the outskirts of Aiea Village towards Honolulu, on the mauka side of the old Maunaloa road. It has an irregular shape. The frontage on—

Q. We'll save a little time here. You sat in court while Mr. Moses testified, did you? [1973]

A. Yes.

Q. You heard Mr. Moses testify in regard to that property, did you? A. I did.

Q. And his description of it? A. Yes.

Q. Do you agree with it, that he substantially described it about the way it was in 1944, October?

A. According to my recollection, I believe he described it accurately.

Q. Have you formed an opinion as to the fair market value of that property on October 4, '44?

A. I have.

Q. And what is that opinion? A. \$14,100.

Q. Now, will you tell us what you considered in arriving at that opinion?

A. I considered that the property was for its highest and best use suitable for division into house lots, that a prospective purchaser probably would not use the entire property as a whole but would divide it up and sell the lots so subdivided. The property was—I considered suitable for that purpose, although because it was of its irregular shape the possibilities of subdividing the rear would not be as good as the front portion of the property. I considered sales of [1974] property near and

(Testimony of John Francis Child, Jr.)

around Aiea Village, more particularly the harbor view tract owned by the Coopers and I believe identified as the Cooper tract. Those lots were sold during the year 1941, interior lots, for 15 cents per square foot, being developed with roads and electric utilities, sewer and water. The lots along the Moanalua road, which probably are comparable with these lots, were sold—that is, comparable with the lots in this tract under consideration along Moanalua road—were sold at approximately 20 cents per square foot. Honolulu Plantation was purchaser. There were road frontage lots on the main highway, Kam highway, which were sold at 25 cents. Making adjustments for time and the situation of this, of the Honolulu Plantation property, I considered that an operator purchasing this property would subdivide it and probably sell it fronting on Moanalua road for a distance of a hundred feet at 25 cents per square foot; and that the rear portions of the property to be sold as lots approximately 15 cents a square foot. I also considered that any operator who bought this property for the purpose of selling it and subdividing it would deduct whatever costs there were and he would expect to get some profit for the operations, holding it until it was sold, and for his services in connection therewith, the value of the entire property at retail, based on the 25 and 15 cents per square foot would be \$20,000, \$20,150, or approximately 16.97 over-all. I considered that—

Q. You mean 16.9 cents per square foot?

(Testimony of John Francis Child, Jr.)

A. 16.9 cents per square foot over-all. I considered that the operator would have approximately five percent in expenses.

Q. What would those expenses be for?

A. Staking, deeds, and paper work.

Q. What about selling expense?

A. That he would probably sell the property and include the selling expense in his profit, which profit, based upon a study of the Cooper harbor view tract, was 28 percent. I used 25 percent. Deducting 5 percent for development expenses, 25 percent for an operator's profit of the gross sales price, it would be \$6,045 or a net value of the property of \$14,105 rounded to \$14,100.

Q. What about that 30 percent total that you have allowed for expense and profit, is that the usual—do you have any knowledge about whether or not that is usual in this community?

A. In nearly all real estate transactions where properties are purchased wholesale to be subdivided, the purchaser figures on making an operator's profit commensurate with the amount of difficulty involved in selling it.

Mr. Rathbun: You may cross-examine.

Cross-Examination

By Mr. Vitousek:

Q. Mr. Child, I notice you have been sitting in the [1976] courtroom practically throughout the trial of this case, is that right?

A. That's correct.

Q. Was that just in connection with your pos-

(Testimony of John Francis Child, Jr.)

sible testimony as real estate expert or as an advisor to the Government?

A. I conferred with counsel on a number of matters and I was sitting here in preparation for testifying on real estate matters.

Q. Well, most of the trial of this case didn't have to do with real estate values. Were you, then, advising the Government?

A. I sat here for the purpose of listening to the testimony to determine if any real estate matters would be brought up which I could advise or contribute on.

Q. Well, were you employed to be present here in the trial of this case? A. I was.

Q. So you were advisor to the Government for compensation? A. I was.

Q. In connection, Mr. Child, with F-1, the parcel that was referred to in your testimony as F-1--

The Court: Civil 529.

Q. That's correct. I want to get these figures right. As I understand in regard to the pump house you placed a value of \$1,800? [1977]

A. That's correct, as depreciated market value.

Q. The replacement cost of \$4,320?

A. That's correct.

Q. And 58 percent good? A. Yes.

Q. Wouldn't that give a greater value than \$1,800?

A. According to my computation it would be roughly that. I believe the exact figure would bring out to eighteen hundred—I mean 58.4.

(Testimony of John Francis Child, Jr.)

Q. If you multiply that again—I get about \$2,500. A. You are correct.

Q. Well, now, do you want to change your opinion in regard to the value of this particular pump house?

A. In view of the error I would use a rounded figure of \$2,500 as the value.

Q. Now, what is the nature of the interior construction of this pump house?

A. The interior was a—I might state that the exterior was corrugated iron, which was over a wood studding—that the interior was corrugated iron, that the base of heavy concrete estimated approximately six inches thick, with walls around, sunken floor, on which was mounted machinery. In considering this for dwelling purposes, I felt that a sub-floor would have to be put in to make it useful for that purpose. The condition of it was fair. [1978]

Q. A part of that has a construction, a sunken pit, has it not, in which the machinery was located?

A. It was.

Q. Did you put any value on that?

A. I considered that in arriving at the cost. However, I felt that for its highest and best use for dwelling purposes that a sub-floor would have to be put in, wooden probably.

Q. That would make a good basement, a good cellar?

A. It would. A very shallow one, however. It could be used for storage.

(Testimony of John Francis Child, Jr.)

Q. But you did consider it useable for dwelling house purposes, that basement or that sunken pit, or did you disregard it entirely?

A. I considered that it was a very good foundation for a dwelling, probably an over-improvement for such purposes, and that a sub-floor would have to be put in.

Q. Well, you considered it was the highest and best use, that its highest and best use was for a dwelling purpose? What was it being used for?

A. At the time I saw it it was being used for a pump house by the Navy.

Q. And as far as you know, that's what it had been used for prior to the Navy taking it over?

A. As far as I know, at some previous time it had been [1979] used by the Honolulu Plantation Company for a pump house, and just prior to the takings was not being used.

Q. Well, now, these takings under this particular suit not only involve this kuleana but a large area of land that had been under cane cultivation, do they not? A. That's correct.

Q. If the land had not been taken under the terms of this suit, all of it, what in your opinion would then have been the best use for this kuleana?

A. Well, I didn't consider it in that light. The property, or this kuleana with its wells was not being used previously, and I might possibly have considered it as over-improvement.

Q. Well, then, you considered its highest and best use was for dwelling house purposes because

(Testimony of John Francis Child, Jr.)

the surrounding land had been taken by the Government in this suit?

A. I considered it as an independent kuleana and therefore based more on that than anything else, that its highest and best use was dwelling house purposes. The surrounding land was not owned by the Honolulu Plantation Company, and that if taken as a unit, divorced in any way from the other lands, that its highest and best use would be for dwelling purpose.

Q. But if you would take it as a whole, the highest and best use would then be for dwelling house purposes?

A. Well, if you want me to assume that something different [1980] from the fact, that something is different from the fact, why I might have considered other higher and better uses. I don't know just what it would have been.

Q. Well, let's assume the facts. The surrounding land was all under lease to the Honolulu Plantation, being used for cane production, and this kuleana was as you saw it, with four wells on it and pump house, under those conditions. Assuming the conditions existing prior to the Government taking the land under this suit, what was the highest and best use?

Mr. Driver: Objected to. The reason for the objection is obviously that the measure of damages is not what this kuleana, what value it may have to the Honolulu Plantation Company.

Mr. Vitousek: If the Court please, that isn't the

(Testimony of John Francis Child, Jr.)

question that was asked. The highest and best use.

The Court: Of what?

Mr. Vitousek: Kuleana, of the kuleana; considering the conditions as they were in existence at the time, that prior to the bringing of this suit that surrounding land was used for cane production. That was part of one enterprise, the testimony has been in this case; it was under lease; this kuleana was part of that enterprise. We must take the conditions as they were.

The Court: But you are confining it, nevertheless, to the kuleana? [1981]

Mr. Vitousek: To the kuleana, yes, if the Court please.

The Court: I think the objection is not well-taken. It is overruled. And you may have an exception. Will you answer the question?

A. I would consider that the kuleana, in the light of the fact that the surrounding lands were now being irrigated by water from other sources, and the fact that it was not being used for a pump site just prior to its acquisition, that probably it had become an over-improvement and that it might be used more for dwelling purposes even to the plantation.

Q. Did you make any inquiry to find out if it was usable under those conditions as a stand-by source in case the other source failed?

A. I made no special investigation of that. However, I considered the fact that the pumps had been removed.

(Testimony of John Francis Child, Jr.)

Q. Now, Mr. Child, did you make any investigations as to possible use by the City and County of Honolulu for its rural water system of the wells on this kuleana? A. I did.

Q. Had the City and County considered using them?

A. My investigation showed that the City and County had made an inquiry concerning the availability of the property for sale.

Q. You stated that when you went out there the Navy [1982] had possession and installed pumps and was drawing water from the wells?

A. That's correct.

Q. Did you make any investigation to find out what it would have cost the Navy to dig and put in operation similar wells? A. I did not.

Q. Do you know where that water was being used by the Navy? A. No, I don't.

Q. In connection with your testimony concerning the value of the land mauka of the road on which the irrigation ditch was located, would that land have been as valuable without any irrigation system as it was with the irrigation system?

A. No, I considered that cane land without irrigation is not as valuable as cane land with.

Q. In connection with the McGrew Point or the kuleans on McGrew Point—

The Court: Cooper Point, same thing.

Q. —or Cooper Point—it's commonly called McGrew Point, isn't it? A. I believe so.

Mrs. Cooper was a McGrew? A. Yes.